

**EXHIBIT
F**

Case: Tina Moore, et al. v. Brian
Kaminski, et al.

4:14-CV1443 SNLJ

Transcript of: William Ballard

Date: September 25, 2015

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515 Olive Street, Suite 300
St. Louis, MO 63101
(314) 241-6750
1-800-878-6750
Fax: (314) 241-5070
Email: schedule@goreperry.com
Internet: [<<<www.goreperry.com>>>](http://www.goreperry.com)

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 1

TINA MOORE, Individually and
as Personal Representative of
the ESTATE OF JASON MOORE, DELORES
MOORE, and RENEE RODGERS, as Next
Friend for A.D.R., a Minor,

Plaintiffs,

VS. Cause Nos. 4:14-CV1443 SNLJ
4:14-CV1447 SNLJ

BRIAN KAMINSKI, et al.,

Defendants.

VIDEOTAPED DEPOSITION OF WILLIAM BALLARD

September 25, 2015

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 3

1 APPEARANCES OF COUNSEL:

2

3 FOR THE PLAINTIFFS:

4 Mr. William T. Dowd

5 Dowd & Dowd

6 211 North Broadway, Suite 4050

7 St. Louis, MO 63102

8 (314) 621-2500

9 bill@dowdlaw.net

10

11 FOR THE PLAINTIFFS:

12 Ms. Molly Westering

13 Baty, Holm & Numrich & Otto, PC

14 4600 Madison Ave., Suite 210

15 Kansas City, MO 64112-3012

16 (816) 531-7200

17 tjohnson@batyholm.com

18

19 FOR THE DEFENDANTS:

20 Ms. Ida Shafaie

21 Pitzer Snodgrass, P.C.

22 100 S. 4th Street, Suite 400

23 St. Louis, MO 63102

24 (314) 421-5545

25 shafaie@pspclaw.com

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 4

1 THE VIDEOGRAPHER:

2 Mr. Timothy Perry

3 Gore Perry Reporting & Video

4 515 Olive Street, Suite 300

5 St. Louis, MO 63101

6 (314) 241-6750

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Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 5

1	INDEX	
2		PAGE
3	EXAMINATION	
4	QUESTIONS BY MR. DOWD	7
5	QUESTIONS BY MS. SHAFAT	164
6	QUESTIONS BY MR. DOWD	173
7	EXHIBITS	
8	Plaintiff's Deposition Exhibit 12	42
9	Plaintiff's Deposition Exhibit 19	62
10	Plaintiff's Deposition Exhibit 20	62
11	Plaintiff's Deposition Exhibit 22A	50
12	Plaintiff's Deposition Exhibit 23	139
13	Plaintiff's Deposition Exhibit 24	142
14	Plaintiff's Deposition Exhibit 25	145
15	Plaintiff's Deposition Exhibit 26	146
16	Plaintiff's Deposition Exhibit 27	147
17	Plaintiff's Deposition Exhibit 28	148
18	Plaintiff's Deposition Exhibit 29	153
19	Plaintiff's Deposition Exhibit 30	154
20	Plaintiff's Deposition Exhibit 31	156
21	(Plaintiff's Exhibits 1-31 were	
22	retained by the court reporter	
23	and attached to transcript,	
24	except for Exhibit 23 which was	
25	retained by Mr. Dowd.)	

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 6

1 VIDEOGRAPHER: And we're on the record at
2 9:30. Today is September 25th, 2015. We are at the
3 Pitzer Snodgrass Law Firm at 100 South Fourth Street
4 in St.~Louis, Missouri. This is the deposition of
5 Lieutenant William Ballard being taken in the cause
6 of Tina Moore, et al., versus Brian Kaminski, et al.
7 pending in the United States District Court for the
8 Eastern District of Missouri, Eastern Division.

9 My name is Tim Perry, Certified Legal
10 Video Specialist, here today with Julie Bulard, our
11 Certified Court Reporter. We're with Gore Perry
12 Reporting & Video at 515 Olive Street in St.~Louis,
13 Missouri. Counsel, would you identify yourselves
14 for the record, please?

15 MR. DOWD: My name is Bill Dowd. I'm here
16 for Tina Moore.

17 MS. WESTERING: Molly Westering for
18 Delores Moore and Renee Rodgers.

19 MS. SHAFaIE: Ida Shafaie for Defendants.

20 VIDEOGRAPHER: Thank you all. Julie,
21 please swear in the witness.

22 WILLIAM BALLARD,
23 of lawful age, having been first duly sworn to
24 testify the truth, the whole truth, and nothing but
25 the truth in the case aforesaid, deposes and says in

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 7

1 reply to oral interrogatories propounded as follows,
2 to-wit:

3 EXAMINATION

4 QUESTIONS BY MR. DOWD:

5 Q Good morning, Lieutenant. My name is Bill
6 Dowd. We just met this morning. And as you know, I
7 represent Tina Moore, the widow of Jason Moore. I'm
8 going to be asking you some questions today about
9 the incident and your knowledge of the incident and
10 your involvement. Do you understand that's why
11 you're here?

12 A Yes, sir.

13 Q Would you go ahead and tell the jury your
14 name, please?

15 A William Ballard.

16 Q And how old a man are you?

17 A I am 61 years old.

18 Q Okay. Can you tell us a bit about your
19 educational background?

20 A I have a high school education. I spent
21 14 years in the marines, various military schools.
22 I was a drill instructor at Parris Island for three
23 years. I've been to the St. Charles County Police
24 Academy, and then I've had various continuing
25 education related to the police work.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 8

1 Q Okay. When is the first time you were
2 sworn in as a peace officer?

3 A February or March of 1989.

4 Q Have you been deposed before in your
5 official capacity as a police --

6 A Yes, I have.

7 Q Okay. About how many times, sir?

8 A Once that I can recall.

9 Q Okay. And was that while you were working
10 for the City of Ferguson?

11 A Yes.

12 Q Do you remember what that case was about?

13 A It was a case involving a prisoner in the
14 jail.

15 Q Was that the case against Officer White?
16 Was he a -- was he a defendant in that case?

17 A Yes.

18 Q Okay. That case is still pending to your
19 knowledge?

20 A I don't know.

21 Q Okay. You were deposed in that case?

22 A Yes, sir, I was.

23 Q Okay. About how long ago was that?

24 A Maybe a year or so. I'm not sure.

25 Q The same attorneys were present on your

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 9

1 behalf at that deposition? I mean, attorneys from
2 this firm, I mean?

3 **A** Correct.

4 **Q** So you may know what I'm about to tell
5 you, but I just want to make it clear for the
6 record. I'm going to ask you a series of questions.
7 Obviously we have a videographer and a court
8 reporter here. It's very important that we get your
9 answers down clearly and correctly. The best way to
10 do that is for you to answer out loud, yes or no, if
11 appropriate. As we go along, we may understand, you
12 and I, what we're saying and we may say uh-huh and
13 uh-uh, about obviously we don't want the court
14 reporter to have to translate that or have a judge
15 or a juror to have to translate that later. You
16 understand that?

17 **A** I do understand.

18 **Q** Okay. Further, if there's any time that
19 my questions are unclear, I'm obviously not a member
20 of your profession or have the experience you do, I
21 may use some of your terms of art inaccurately. So
22 if sometime you don't understand my question, I want
23 you to tell me so and I'll try to rephrase it and
24 make it more clear. Do you understand that?

25 **A** Yes, sir.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 10

1 **Q** Okay. And if we -- if you answer my
2 questions, we're going to understand and agree for
3 the record that you did understand it as asked. Is
4 that fair enough?

5 **A** Yes, sir.

6 **Q** Okay. Can you tell us what you've
7 reviewed prior to your deposition today regarding
8 the Moore incident?

9 **A** I have reviewed the police report, the use
10 of force report, the taser report, and I reviewed
11 the use of force policy and the taser policy.

12 **Q** Anything else?

13 **A** No.

14 **Q** Other than your attorneys, who have you
15 spoken to about your deposition today?

16 **A** Just to let the department know that I
17 would be here and not at Ferguson.

18 **Q** Okay. No substantive discussions with
19 Officer White or Kaminski or any of the -- either
20 the former Chief Jackson or Officer Bebe, anybody
21 like that?

22 **A** No.

23 **Q** Now, through your career, you've had
24 firearm training, I assume?

25 **A** Yes, sir, I have.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 11

1 Q And firearm training is designed to make
2 you proficient if you had to use your weapon to be
3 accurate, correct?

4 A Yes, sir.

5 Q And it's -- you go through annual training
6 for that, I understand, is that correct, all
7 officers at the Ferguson Police Department?

8 A Yes, sir, a minimum of annually.

9 Q Okay. And what is the purpose of having
10 annual training for firearms?

11 A Just to keep your skills up to speed where
12 you need to be.

13 Q Okay.

14 A We try at Ferguson to do it a minimum of
15 twice a year. And depending on the budget and the
16 ammunition, sometimes as much as three and four
17 times a year.

18 Q Okay. And the skills include techniques
19 and the decision-making process?

20 MS. SHAFATIE: Object to form. You may
21 answer. You may answer.

22 Q (By Mr. Dowd) Do you understand the
23 question?

24 A Yes. I'm not really sure if -- about the
25 decision-making.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 12

1 Q Okay.

2 A But it's more proficiency.

3 Q Okay. So one of the things I understand
4 is that general firearms training includes that if
5 you're going to pull your weapon, don't pull it
6 unless you're going to use it, correct?

7 A Yes, sir. If you're going to pull a
8 weapon then there's a reason for you to pull that
9 weapon.

10 Q Right. And in general, if you're going to
11 fire your weapon at an aggressive or armed suspect
12 you're going to aim for center body mass?

13 A That is correct.

14 Q All right. And center body mass would
15 include slightly below your microphone today?

16 A Yes, sir.

17 Q Okay. And the reason that the training on
18 that proficiency is done is so that the officers
19 have muscle memory as to -- in the pressure of the
20 situation to react and aim at center body mass,
21 correct?

22 A That is correct.

23 Q Do the officers at Ferguson when they go
24 through the POST training, do they have deescalation
25 training?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 13

1 **A** We have just started doing that within the
2 last six months or so.

3 **Q** When you went through the academy in St.
4 Charles, did you have deescalation training there?

5 **A** No, sir.

6 **Q** Could you tell the jury what your
7 understanding of deescalation training is?

8 **A** Different techniques of how to approach a
9 situation and possibly peacefully resolve it, I
10 suppose, without the use of force. You know, the
11 way you present yourself, the way you speak with
12 people.

13 **Q** Okay. Can you give us some examples with
14 regard to -- one of the force continuums is
15 obviously just officer presence, right?

16 **A** That's correct.

17 **Q** And what is officer presence designed to
18 do in a disruptive situation?

19 **A** Just to show that a person of authority is
20 now on scene and going to take charge of the
21 situation.

22 **Q** Okay, all right. And are deescalation
23 techniques to be used as sort of the next use of
24 force tool if the circumstances allow?

25 **A** Yes, sir.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 14

1 **Q** Okay. Can you give us some examples where
2 deescalation training is to be used most commonly?

3 **A** Most commonly it would probably be used in
4 a disturbance type situation or, say, approaching a
5 pedestrian on the street, you know, a call for a
6 suspicious person or whatever. Instead of looking
7 so abrupt and, you know, everything else, you want
8 to approach that person in more I guess of a
9 friendlier subdued manner. You don't want to come
10 off as being too hard-nosed about it.

11 **Q** Okay. So more of a calming effect?

12 **A** Correct.

13 **Q** Can you tell us about your taser training,
14 if any?

15 **A** Right after we first got the tasers -- and
16 please forgive me, I don't remember when that was.

17 **Q** Sometimes in 2010, middle of 2010.

18 **A** Okay. Each officer was required if you
19 were going to carry the taser to have the initial
20 taser training, and then after that, a minimum of
21 annual training to recertify with your taser.

22 **Q** How about you personally, sir?

23 **A** Yes, sir, I took the initial training.
24 And I believe it was in January or February, again,
25 forgive me, I recertified again.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 15

1 Q Okay. January of this year you
2 recertified?

3 A I believe it was.

4 Q Okay. What about what's referred to as
5 CIT training, or crisis intervention team training?

6 A We have officers who are CIT trained. And
7 we're -- our goal is to have everyone in the
8 department CIT trained. However, the problem lies
9 in the fact that the only place to get that training
10 is the St. Louis County Police Academy. And they
11 usually run, I would say, semiannual classes. And
12 again, the problem with that is that we have, you
13 know, in excess of 50 officers in our department.
14 You also have 92 municipalities. If I'm off one or
15 two, I'm sorry.

16 Q Yeah.

17 A They may only have 50 seats for that CIT
18 class.

19 Q Understood.

20 A So we send whoever we can if a seat's
21 available.

22 Q How long have you been with the Ferguson
23 department again, please?

24 A 26 years.

25 Q Okay. And when did the department begin

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 16

1 sending people to the academy for CIT training?

2 **A** It was soon after the program was
3 instituted, maybe within two years after they first
4 started teaching CIT.

5 **Q** Okay. And approximately when was that?

6 **A** I couldn't begin to guess. Maybe --

7 **Q** I don't want you to guess either, but
8 would it -- is it something as far back as 2000 or
9 2010 or, you know, can you give us just a range,
10 please?

11 **A** I would have to say prior to 2010. Maybe
12 2008. But again, I'm not really sure.

13 **Q** No, that's fine.

14 **A** I'd just be speculating.

15 **Q** I appreciate that. Do you know if Officer
16 White or Officer Kaminski had CIT training in
17 September of 2011?

18 **A** No, sir, I don't.

19 **Q** What is the purpose, to your
20 understanding -- excuse me. Have you had CIT
21 training yourself?

22 **A** No, sir, I haven't.

23 **Q** As -- are you one of the command officers
24 who's trying to get these field officers to get
25 their CIT training as soon as possible?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 17

1 **A** Yes, sir. We try and -- well, I'm part of
2 the process. I don't have the ultimate say in who
3 goes, but I do submit names. You know, I go with my
4 sergeants and say who's up next, and we send --

5 **Q** Why is it important, in your opinion to
6 get the field officers trained in CIT training,
7 crisis intervention training?

8 **A** Probably because most of the contacts that
9 we have have some sort of mental issue going on with
10 them. It's -- again, we're back to the deescalation
11 also. People are upset either through circumstances
12 or possibly some sort of, you know, mental defect at
13 the time or a disease. The CIT training, as I
14 understand it, helps these officers recognize that
15 and gives them different tools to help that person
16 or, you know, not to escalate the problem if you can
17 help from doing that.

18 **Q** Understood. With regard to -- tell me
19 your involvement -- let's say since 2005, you were a
20 lieutenant at that time in Ferguson?

21 **A** 2005 --

22 **Q** Why don't I withdraw the question. We can
23 do it this way. It might be easier for you and --

24 **A** I was a sergeant, I believe, in 2005.

25 **Q** Okay. Would you just tell us -- I think

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 18

1 you said you have been in Ferguson 26 years?

2 A Yes, sir.

3 Q Can you tell us -- you started as a field
4 officer, patrolman?

5 A Yes, sir.

6 Q And tell us when you were promoted to
7 sergeant, if that was your next rank.

8 A I would have been promoted somewhere
9 around 2000 maybe.

10 Q Okay.

11 A Something like that. I'm not exactly
12 sure.

13 Q That's okay. Just -- close is good enough
14 for these dates. And then how long were you a
15 sergeant before you were promoted to lieutenant?

16 A I was promoted in 2008 or 2009.

17 Q Okay. So what is your involvement as a
18 lieutenant since you were promoted to that position
19 in 2008 or 2009 approximately with regard to
20 supervising the force in general as far as complying
21 with policies of the police department?

22 A As a lieutenant?

23 Q Yes, sir.

24 A As a lieutenant, I'm watch commander or
25 platoon commander and I am in charge of --

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 19

1 ultimately in charge of two squads of eight men and
2 two sergeants. And I do payroll, approve reports,
3 and answer calls on the street and fill in for the
4 sergeants on their days off or vacations, that sort
5 of thing.

6 Q Are there any regular meetings with the
7 other commanders with regard to how the force is
8 doing with regard to complying with your policies,
9 the Ferguson policies and procedures? I think they
10 are called general orders.

11 A We have a weekly or -- we try to have it
12 weekly, staff meeting. Sometimes, though, depending
13 on, you know, what happens, we may only have one
14 staff meeting a month.

15 Q Okay. And who's present at the staff
16 meetings?

17 A Oh, that would be usually the chief of
18 police, the three captains -- well, at that time
19 there would have been three. There's only two
20 captains now. The sergeants and the lieutenants.

21 Q How many sergeants are there
22 approximately?

23 A I believe there are five.

24 Q And that would have been about the same in
25 September of 2011?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 20

1 **A** Yes.

2 **Q** And who did you say besides sergeants that
3 would be there? So I've got --

4 **A** Oh, no, there would only have been four in
5 2011, I'm sorry.

6 **Q** Okay, thank you. So chief, two to three
7 captains, and then -- in 2011 it would have been
8 four sergeants. Anyone else that would be at those
9 staff meetings?

10 **A** In 2011, the sergeants and the lieutenants
11 very rarely went to the staff meetings.

12 **Q** Okay.

13 **A** It was mostly the captains and the chief.

14 **Q** And about when did that change?

15 **A** I would say within the last two years.
16 They now have it to where the lieutenants and the
17 sergeants are invited to the meetings.

18 **Q** Excuse me. Why was that change made?

19 **A** The -- I guess ultimately the chief and
20 whomever decided that they needed to have
21 lieutenants and the sergeants there. Because I know
22 myself and Lieutenant Rettke, we had always asked if
23 we could -- you know, can we come to the staff
24 meetings, but we would never get the invite or
25 whatever.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 21

1 **Q** Yeah.

2 **A** They told us, well, you guys are working
3 midnights and we don't want to bother you and that
4 sort of thing.

5 **Q** So what -- do you know what was discussed
6 in those meetings prior to the lieutenants and
7 sergeants joining the staff meetings?

8 MS. SHAFAT: Object to foundation. You
9 may answer.

10 **A** No, I have no idea.

11 **Q** (By Mr. Dowd) Okay. Just in general
12 terms. I'm not going to ask you any specific
13 reviews or anything. But what was the -- if you
14 know what the agenda was by most general terms.

15 **A** I have no idea what the agenda would have
16 been unless it directly related to patrol such as
17 scheduling for a 4th of July event, some sort of
18 thing like that. Other than that, no, I have no
19 idea what they talked about.

20 **Q** Okay. So I think you said in the last
21 two -- approximately last two years you have been
22 attending the staff meetings?

23 **A** Yes.

24 **Q** And tell us what are discussed generally
25 at those meetings.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 22

1 **A** Community problem solving. We're in the
2 process of revamping or looking at all of the
3 general orders. There's over a hundred of them.
4 We're looking at those to see what needed to be
5 changed or that sort of thing. Personnel transfers
6 to cover shortages.

7 **Q** Anything else?

8 **A** Additional training, any training classes
9 that may be available, or the chief will ask us to
10 see if we can find training for something.

11 **Q** Okay. Is there -- is there -- I know
12 there's a phrase in-house training that we've heard
13 in these depositions. Is there a room at the police
14 department and are there classes given --

15 **A** Our -- yes, our in-house training would
16 have been conducted in the roll call or muster room,
17 except for firearms which is conducted on the range.

18 **Q** And what kind of training occurs in the
19 muster room?

20 **A** Well, all sorts of things. Just recently
21 we've had training in deescalation. We've had
22 training in community policing models, different
23 types of them. We'll have training on
24 investigations.

25 **Q** Like investigation techniques and the

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 23

1 proper way to do it?

2 A Correct.

3 Q Okay. Anything else you can recall?

4 A Evidence procedures. Nothing else comes
5 to mind or doesn't jump out at me.

6 Q Okay. Can you tell us what -- you
7 mentioned deescalation being something that's come
8 about recently or relatively recently. Do you
9 recall in 2011 the kinds of things that were
10 discussed, or I should say covered in the training
11 sessions at the department? For example, were
12 community policing models and evidence procedures
13 things that were covered in those trainings back
14 then?

15 A Just the best practices for the evidence
16 and, you know, any supreme court updates, rulings,
17 pertaining to that. Deescalation, I don't believe
18 we had any type of deescalation at that time.

19 Q Where are the documents kept of the
20 training currently, and if you know, back to 2011,
21 2010 timeframe.

22 A I have no idea.

23 Q Okay.

24 A I just -- we send them upstairs. And
25 where they go from there, we -- I have no clue.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 24

1 **Q** Okay. When you say upstairs, is there
2 somebody generally --

3 **A** My office is down in the basement.

4 **Q** Understood. After all these years? So if
5 you had to pick up a phone now and say I want to get
6 those materials, who would be the first call you'd
7 make?

8 **A** Right now it would be Detective Rick Fenn.
9 He and Sergeant Allen are the two, I believe, that
10 are doing that.

11 **Q** Okay. And what kind of documents would
12 you expect them to have? Written materials covering
13 these subjects would be one?

14 **A** No. I think mostly what they have -- what
15 we turn in to them is just our certificates of
16 completion.

17 **Q** Okay.

18 **A** If we go to St. Louis County they always
19 give out a -- you know, because we have to have our
20 continuing education units to stay certified as
21 police officers. So we keep those on file for three
22 years during the reporting period because we have to
23 have a minimum of 48 hours.

24 **Q** Okay. And what about the materials that
25 may have been used at the training session?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 25

1 **A** I have no idea where those would be.

2 **Q** Okay. Were there -- to your recollection,
3 were there materials at the training sessions,
4 handouts, things like that?

5 **A** There were some handouts, especially
6 pertaining to constitutional laws, search and
7 seizure, that sort of thing. Evidence was
8 usually -- they would just -- you know, each person
9 would have the evidence log, a blank one, and then
10 we'd just go through and they'd talk about how to do
11 it and the chain of custody, that sort of thing.

12 **Q** Okay. What about any testing on the
13 training in-house in the muster room? After -- you
14 know, was there any regular testing where the things
15 that are covered -- did you say you -- they did that
16 how many times a month?

17 **A** On the training?

18 **Q** Or year? Yes, sir. I forgot.

19 **A** It just depended. It was -- it was
20 nothing that was set in stone that, you know, today
21 is training day or anything.

22 **Q** Okay. Do you have an estimate of --
23 every -- some officers are going to be on the street
24 so you can't -- you've got to have it multiple times
25 to get everybody the constitutional or evidence

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 26

1 training?

2 A Correct.

3 Q Yeah. So can you give us a general idea
4 about how much -- how often you would have expected
5 each officer to have received the in-service
6 training per year?

7 A I couldn't guess on that.

8 Q Okay. Who would -- who would know best
9 about that, you think, at the department?

10 A That would probably be Sergeant Allen or
11 possibly Lieutenant Nabdzyk. Would you like me to
12 spell that for you?

13 Q Yes, please. For her too.

14 A N-a-b-d-z-y-k.

15 Q So are there just two lieutenants at the
16 Ferguson Police Department right now?

17 A Currently there are three, Lieutenant
18 Nabdzyk, Lieutenant Rettke and myself.

19 Q Do you want to spell Rettke for her? I
20 think I've seen it, but --

21 A That would be R-e-t-t-k-e.

22 Q So to your knowledge, as you sit here
23 today, you're not aware of any testing on the
24 in-house training at the physical location of the
25 Ferguson Police Department?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 27

1 **A** In regards to any training?

2 **Q** Any of these issues we've been talking
3 about, yes.

4 **A** Anything that we've been certified on
5 there's always a written test. The taser, firearms
6 when we had our transitional training on -- from
7 Glock to the Sig Sauer pistol. There were written
8 tests on all of that.

9 **Q** Okay. And that's -- I understand most of
10 that was done outside the Ferguson Police
11 Department, the physical facilities, right? You
12 would -- off-site, so to speak?

13 **A** For --

14 **Q** For the weapons training and the taser
15 training.

16 **A** No. We have a range at Ferguson Police
17 Department.

18 **Q** Okay. You just don't do it in the muster
19 room is what you were saying earlier?

20 **A** Correct.

21 **Q** Understood. Where are the results of
22 those tests kept?

23 **A** I would have to defer to one of those --

24 **Q** Sergeant Allen or --

25 **A** -- individuals.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 28

1 **Q** Okay. On the in-house training. I just
2 want to make sure I understand this. On the
3 in-house training on community policy modules or
4 evidence procedures or the supreme court rulings on
5 constitutional rights and use of force, etcetera,
6 are you aware that those officers at the end of that
7 training or on some kind of regular basis would be
8 given a test?

9 **A** No. They usually weren't.

10 **Q** And why was that, if you know?

11 **A** I don't know.

12 **Q** Okay.

13 **A** Now, if you go to St. Louis County Police
14 Department --

15 **Q** Uh-huh.

16 **A** -- to their training courses, they -- on
17 some of their courses they will have a test. But as
18 far as the constitutional -- you know, there's
19 nothing on every training course that you have
20 that's a written test.

21 **Q** And St. Louis County Academy and the St.
22 Louis County Police Department, they don't train
23 your officers on the Ferguson general orders, do
24 they?

25 **A** No, not on Ferguson general orders.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 29

1 **Q** That's the responsibility of the Ferguson
2 Police Department?

3 **A** The Ferguson Police Department.

4 **Q** Okay. And what kind of monthly or annual
5 training do the officers have on the policies, the
6 general orders of the department?

7 **A** Once an order is issued, it goes into the
8 computer system which each officer has access to.
9 When they read that policy, they electronically sign
10 that they acknowledge they've read and understand
11 the policy. Any additions to that are also done the
12 same way.

13 **Q** Okay.

14 **A** Myself and Lieutenant Rettke and our
15 sergeants will bring up short subjects at roll call.
16 And, you know, it could be something as simple as,
17 you know, don't -- you know, this is what you have
18 to do to package DNA. Don't forget to sign this
19 sheet, you know, that sort of thing.

20 **Q** Reminders?

21 **A** Right.

22 **Q** Okay.

23 **A** So it's an ongoing process. But formally,
24 there's nothing that --

25 **Q** Okay. So there's no formal requirements

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 30

1 that they review them on a regular basis and there's
2 no testing on them. Is that -- do I understand that
3 correctly?

4 A Yes.

5 Q Okay. You said that they -- when a new
6 order is issued or a previous order is modified,
7 they have to go on and read it and acknowledge on
8 the computer, correct?

9 A Correct.

10 Q When is the next time that they are
11 required to do that per policies and procedures and
12 general orders of the Ferguson Police Department?

13 A It should be immediately. When they log
14 on to their computer, they're required by policy to
15 check what's called Deskbook. It's just a -- I
16 don't know, a folder or whatever inside the computer
17 program that tells you any neighborhood problems,
18 etcetera, etcetera. And it's done on a daily basis.

19 Q Okay.

20 A Any new policies or procedures or anything
21 like that goes into Deskbook. So the officer, as
22 soon as he signs in, if he checks Deskbook, knows to
23 go in and check that policy.

24 Q Is there someone who checks to make sure
25 the officers regularly check their Deskbook before

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 31

1 their --

2 **A** Captain Henke used to do that, but he's
3 retired. I don't know if anyone's doing it now or
4 not.

5 **Q** You think he was the one likely doing it
6 in the 2011 time frame?

7 **A** Probably so because he was in charge --
8 again, I can't speak for the entire department.

9 **Q** Yeah.

10 **A** Just the patrol division. But he was the
11 patrol division commander. And I know that he would
12 send, you know, the list down, these officers need
13 to get on here and, you know, acknowledge or read
14 the policies.

15 **Q** All right. So I understand from your
16 prior testimony that there may be as many as a
17 hundred general orders, policies?

18 **A** There's at least a hundred.

19 **Q** Okay. And it's further my understanding
20 that the only time the officers acknowledge having
21 reviewed a policy is when it's new or modified,
22 correct, as far as acknowledging it on their
23 computer on their Deskbook?

24 **A** Correct. They are not required to go back
25 through once it's signed off on.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 32

1 Q Do you know what types of statistics, if
2 any, the department uses to analyze the
3 effectiveness of their policies and procedures and
4 the training on those?

5 A No, sir, I don't.

6 Q Are you aware of any kind of analysis that
7 the department was going through in 2010 or 2011 to
8 determine if the officers were complying with the
9 policies and procedures and general orders of the
10 Ferguson Police Department?

11 A No, sir, I don't.

12 Q How does the department measure its
13 success as far as communicating the policies and
14 procedures and the training on an ongoing basis?

15 MS. SHAFATIE: Object to foundation. You
16 may answer.

17 A I don't know because I'm not involved in
18 any of that portion. I'm involved in the day-to-day
19 patrol operations.

20 Q (By Mr. Dowd) Who --

21 A That's --

22 Q Sorry to cut you off.

23 A No, that's quite all right.

24 Q Who in 2011 would have been involved in
25 that?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 33

1 **A** That would probably -- and I'm guessing
2 again because --

3 **Q** Your best --

4 **A** My best guess would be Captain Henke or
5 possibly Lieutenant Nabdzyk.

6 **Q** You were on duty on September 17th, 2011,
7 I understand?

8 **A** Yes, sir.

9 **Q** And you were a lieutenant at that time to
10 your belief?

11 **A** I believe so.

12 **Q** Okay. And if you were there on a Saturday
13 morning, would that -- safe to say you were covering
14 for a sergeant on that shift?

15 **A** Well, my days rotate. So even if a
16 sergeant is working, I may be working any day.

17 **Q** Okay.

18 **A** But that day, I believe the sergeant was
19 off because there was no sergeant working. I don't
20 know if he was off or if I was -- if they had -- I
21 don't -- I don't remember the circumstances. I just
22 know I was the only supervisor on.

23 **Q** That was going to be my next question. So
24 can you tell us when that shift would have started
25 for -- I assume your shift is the same as the patrol

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 34

1 officers, Bebe and the rest?

2 A Yes.

3 Q And approximately what time would that
4 shift have started?

5 A That would have started at 6:30 a.m.

6 Q Okay. So at the very beginning of that
7 Saturday morning shift?

8 A Correct.

9 Q And can you tell us anything that had
10 happened prior to this incident, this call that you
11 recall that day?

12 A No. We were in roll call and received the
13 call.

14 Q Okay. While you were still in the
15 station, the muster room?

16 A Correct.

17 Q Okay. And what was the first thing you
18 heard about the call?

19 A A naked man running out into traffic on
20 Airport Road.

21 Q Okay. And were you in the muster room
22 with Officer Kaminski, White and Bebe?

23 A Yes.

24 Q Okay. And did the meeting break up upon
25 that call?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 35

1 **A** Yes.

2 **Q** Okay. And everyone went to their
3 respective patrol cars?

4 **A** Correct, everyone went and loaded their
5 patrol call and --

6 **Q** Okay. And tell us what you mean by
7 loaded.

8 **A** They put in their work bags, their
9 paperwork. You know, you make sure your lights and
10 siren work and just make sure you have all your
11 equipment that you're going to need for the day.
12 That's what we call loading the car.

13 **Q** Okay. Is the car previously looked over
14 by somebody from the functional stability of the
15 automobile, make sure it's got gas and all that
16 stuff in it? When you start a shift, is the car
17 ready to go?

18 **A** Yes. The officer who used the vehicle
19 prior to you should have taken it to gas it or
20 whatever, that may not happen because he could be
21 delayed for whatever reason or he just could, you
22 know, not do it.

23 **Q** Okay. Anything else that you would have
24 done or the patrol officers would have done at the
25 station prior to leaving to go look for Jason Moore?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 36

1 **A** Not to my knowledge.

2 **Q** Can you tell us approximately how much
3 time passed from the time you got that call when you
4 were present with the other officers in the muster
5 room until you arrived at the scene?

6 **A** I'm -- again, I -- without looking, I'd
7 have to say 15 minutes.

8 **Q** Okay. Can you tell us approximately how
9 much time passed from the time you heard the call in
10 the muster room until you heard over your radio, if
11 you did, that Officer Kaminski was on the scene?

12 **A** I don't recall exactly how much time that
13 would have been.

14 **Q** Okay. Do you have a sense of how long he
15 was on the scene prior to your arrival?

16 **A** Probably -- again, I'm going to guess,
17 maybe three, four minutes.

18 **Q** And what else, if anything, did you learn
19 about the gentleman you learned later was Jason
20 Moore between the time you heard the call when you
21 were with the other officers at the station and you
22 arrived at the scene?

23 **A** What did I hear --

24 **Q** Yes.

25 **A** -- about him?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 37

1 Q Yes.

2 A That he had been seen at several
3 locations. Originally I believe it was in front of
4 Poyeye's Chicken or something on Airport Road. Then
5 I went through there. There was no one there. Then
6 I hear on the radio that he had been seen up, you
7 know, another two or three blocks up. I go there.
8 There's nobody there. So myself and the other
9 officers start fanning out in circles trying to find
10 Mr. Moore.

11 Q Okay.

12 A Then on the radio I heard that Officer
13 Kaminski had found him and --

14 Q Had the radio dispatch reports that you
15 were hearing about his moving location, were those
16 simultaneously likely heard by Officers Kaminski and
17 White?

18 A Possibly. It came across the radio.

19 Q The dispatch?

20 A To the best of my recollection it came
21 through dispatch, yes.

22 Q So it's going to everybody that's active
23 in the field?

24 A Correct.

25 Q Was there any mention he was running?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 38

1 **A** Yes.

2 **Q** Okay. And so that was known prior to?

3 **A** Yes.

4 **Q** -- officer Kaminski --

5 **A** He was running naked through traffic

6 and --

7 **Q** So what was the first thing you saw when
8 you arrived at the scene of Airport and -- is it
9 Henquin? Is that how you all pronounce it?

10 **A** Yes, Henquin. As I pulled up onto the
11 scene, Officer Kaminski was there, Officer White was
12 there. Mr. Moore was in custody. You'll have to
13 forgive me. I don't remember if Officer Bebe was
14 there at that time or not. And as I approached,
15 asked what happened, Officer Kaminski started
16 telling me, and then it was determined that
17 Mr. Moore had stopped breathing.

18 **Q** What position was Mr. Moore in when you
19 say he was in custody as you approached the scene
20 and got out of your car?

21 **A** Again, to the best of my recollection, I
22 would say he was probably handcuffed and laying on
23 the street prone, facedown.

24 **Q** Okay. On his stomach?

25 **A** On his stomach.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 39

1 Q And chest? Do you recall if you could see
2 his face? Was his face turned towards you or away
3 from you?

4 A His face was turned towards me and he was
5 sort of growling and --

6 Q Groaning?

7 A No. It was more of a -- like a growling.
8 It's kind of hard to explain.

9 Q Like a guttural breathing?

10 A I suppose you could say that. But to me,
11 it sounded more like a growl like, you know, he
12 was -- and Officer White and Officer Kaminski were
13 standing there. Officer White -- to me, it looked
14 like Mr. Moore was going to try and get up again
15 because I think, if I recall correctly, Officer
16 White said something like, just stay there, don't --
17 it's over, don't get up, something like that.

18 Q So you think it was shortly after he had
19 been handcuffed?

20 A I don't know how long he had been
21 handcuffed.

22 Q Okay. Did you -- when you were
23 approaching the scene, were Mr. Moore's eyes open?

24 A Yes.

25 Q Did you notice any bruising or scrapes on

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 40

1 his face?

2 **A** Yes. It looked like he had probably
3 scraped his face on the pavement because he kept
4 raising his face up and down off -- you know, and
5 turning his head side-to-side.

6 **Q** Okay. And you don't know how much time
7 had passed from the cessation of the tasing until
8 you got there. Is that correct?

9 **A** That's correct.

10 **Q** Did -- have you -- you were Officer
11 Kaminski's supervisor that day, correct?

12 **A** Yes, sir.

13 **Q** And who was his sergeant at that time, if
14 there was a particular sergeant?

15 **A** I don't know, to be honest with you. I
16 don't remember who the sergeant would have been.

17 **Q** To your knowledge, in 2011, did Officer
18 Kaminski have any kind of abnormal allergic reaction
19 to pepper spray?

20 **A** Yes. Officer Kaminski does not tolerate
21 OC spray. He let me know about it after an incident
22 where we had taken old OC canisters and we were
23 getting rid of them in the dump -- spraying them in
24 the dumpster to, you know, dispose of it. And he --
25 he does not tolerate OC spray.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 41

1 Q I mean, nobody tolerates it well, but
2 you're saying --

3 A No, but he's exceptionally -- you know,
4 his eyes swell up and -- you know, so he made sure
5 he told pretty much everybody that worked with him,
6 you know, don't spray that stuff because I can't --

7 Q So approximately when did that occur, the
8 dumpster cleaning of the OC sprays?

9 A Oh, that was probably months prior. I
10 don't know exactly.

11 Q Months prior to September --

12 A The incident that you're --

13 Q Okay.

14 A -- speaking of? I thought we were still
15 talking about that day.

16 Q I just wanted to make sure for the record,
17 yeah. So you knew at that time that one of his use
18 of force tools was not an option for him. He was
19 down to baton, taser, hands on, arm locks, wrist
20 locks?

21 A Correct.

22 Q Command presence, command voice and his
23 firearm?

24 A That's correct.

25 Q Any other officers out there unable to

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 42

1 tolerate mace?

2 **A** Not to my knowledge that work for me.

3 Usually if they are they'll come and tell a
4 supervisor or at least the other officers. But to
5 my knowledge, they -- none like it, you know.

6 **Q** Sure.

7 **A** But I -- none have come to me and said,
8 look, I just can't do this and I'm --

9 **Q** Okay. So based on your understanding, if
10 Officer Kaminski was in a scene where one of the
11 officers or an officer from another department used
12 their mace he could have an allergic reaction
13 leaving him unable to perform his duties?

14 **A** Yes, sir.

15 **Q** I'm going to give you what's been marked
16 Exhibit 12, which is what we've been referring to as
17 the police report in this matter. I understand it
18 has your use of force report and the taser report as
19 well. Would you look through that, sir, and see if
20 it looks familiar to you?

21 **A** Yes, sir, with the exception of the
22 property receipt. I've never --

23 **Q** Okay.

24 **A** I haven't seen a copy of that.

25 **Q** Understood. So if you would look back --

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 43

1 I think it's a few pages back there is your use of
2 force report slash pursuit report.

3 A Yes, sir.

4 Q Okay. On the second page of that is
5 the -- your narrative, right?

6 A Yes, sir.

7 Q And that's -- so this is -- you authored
8 this narrative here?

9 A Yes.

10 Q Okay. And it's dated 09/17/11. Is that
11 when you completed this report?

12 A That is correct.

13 Q Have you ever seen the CAD transcripts
14 from this event?

15 A No, sir, I have not.

16 Q All right. Have you ever listened to the
17 dispatch tapes?

18 A No, sir.

19 Q Do you know when the dispatch tapes would
20 have been destroyed or discarded?

21 A No, sir, I have no idea what they do in
22 dispatch.

23 Q Okay. Would the CAD transcript show when
24 you arrived at the scene? Would you have let the
25 dispatcher know you were there and it would have

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 44

1 been recorded automatically?

2 A Normally I do. But there have been times
3 when I just jump out of the car and don't tell them
4 I'm on scene.

5 Q But normally you would say on scene --

6 A Normally I do.

7 Q -- as you're parking your car?

8 A Correct.

9 Q So I want to run through this with you.
10 Hopefully -- there's just a few things in here I
11 want to ask you about. The first paragraph -- the
12 first sentence of the first paragraph, this is the
13 information you mentioned earlier that you had
14 received while you were in the -- what's the other
15 word you used besides the muster room?

16 A Roll call room.

17 Q Roll call room. While you were in that
18 room, you all heard that over the dispatch? There's
19 a speaker in the room and you all heard that?

20 A We have our walkie-talkies.

21 Q So you're hearing it from the --

22 A I believe so.

23 Q Okay. Do you all have attachments on
24 your -- on your collar, on your epaulet, whatever
25 this is called?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 45

1 **A** Some officers do.

2 **Q** Okay. And do you recall that day whether
3 Officer Kaminski had one up there, his microphone up
4 there?

5 **A** No, sir, I don't.

6 **Q** You don't recall either way?

7 **A** I don't recall.

8 **Q** Okay. So that's the -- that's the report
9 you heard while you were in the room, right?

10 **A** Yes, sir.

11 **Q** Okay. And does that indicate to you that
12 that's a person who's in personal crisis --

13 MS. SHAFATIE: Object to --

14 **Q** (By Mr. Dowd) -- having some kind of --
15 excuse me.

16 MS. SHAFATIE: You can finish.

17 MR. DOWD: I'll rephrase it, yeah.

18 **Q** (By Mr. Dowd) Does that indicate to you
19 that you've got somebody who's either in personal
20 crisis or having some kind of mental problems?

21 **A** Yes, sir.

22 **Q** Did anyone notify an ambulance or call for
23 an ambulance at that time?

24 **A** Not at that time, to my knowledge. We
25 didn't -- I didn't call.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 46

1 Q Wasn't department policy to call an
2 ambulance when there was somebody in personal crisis
3 or --

4 A Not until we locate that person.

5 Q Okay.

6 A If not, you tie up an ambulance that's
7 just driving around or sitting some place waiting
8 for you -- you know, if you don't locate a person.

9 Q And so it's still not department policy
10 today, correct?

11 A No, sir.

12 Q And then the next sentence regarding
13 Officer Kaminski locating the subject at Airport and
14 Henquin at Tim Allen's Cleaning Service, correct?

15 A Yes, sir.

16 Q And have you ever spoken to Mr. Allen?

17 A No, I haven't.

18 Q Do you know if any of the officers have
19 ever spoken to Mr. Allen?

20 A No, sir, I don't.

21 Q Have you heard of him?

22 A I haven't met the man, but -- so I'd have
23 to say no.

24 Q Have you heard anything about him from
25 other members of the department?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 47

1 **A** No, sir.

2 **Q** Okay. So the next paragraph, the first
3 sentence states, quote, The subject later identified
4 as Moore, comma, Jason, B/M 03-04-080 was completely
5 naked staring out at Airport Road.

6 Did I read that correctly?

7 **A** Yes, sir.

8 **Q** Is that information you would have
9 received from Officer Kaminski?

10 **A** That's correct.

11 **Q** So that sentence, if I can leave out the
12 abbreviations states, quote, The subject later
13 iden -- let me just start over. The subject was
14 completely naked staring out at Airport Road,
15 correct?

16 **A** Yes, sir.

17 **Q** As part of deescalation training, is that
18 something that if he's static at that point the
19 deescalation training would say let him be until
20 backup arrives?

21 MS. SHAFATIE: Object to form and
22 foundation.

23 **Q** (By Mr. Dowd) Generally speaking?

24 MS. SHAFATIE: You may answer.

25 **A** Generally speaking, yes. But in this

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 48

1 situation where he had been running out into the
2 street and it was exceptionally heavy traffic, I --
3 I don't know that that would have been a good idea
4 because you're not going to know exactly what his
5 frame of mind is and whether or not he's going to
6 run out into the roadway.

7 Q (By Mr. Dowd) Okay. You used the phrase
8 exceptionally heavy traffic.

9 A Yes.

10 Q What did you mean by that?

11 A It was almost -- odd as it may seem, it
12 was almost a rush hour traffic for whatever reason
13 that morning.

14 Q Okay.

15 A There was a lot of traffic on Airport
16 Road.

17 Q And you're familiar with that in your 26
18 years of being a Ferguson Police Department,
19 correct?

20 A Correct.

21 Q Police officer and sergeant and
22 lieutenant. During that time at Airport near
23 Henquin, you're saying that the traffic on that
24 Saturday morning was comparable to what you might
25 see at 5:00 on a Thursday or Friday?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 49

1 **A** Yes. There was a lot of traffic.

2 **Q** Okay. And most Saturdays, how would you
3 describe the traffic on most Saturdays?

4 **A** Early in the morning like that on a
5 Saturday, once Boeing lets out, there's usually not
6 the amount of traffic that there -- you know, it
7 picks up as the day goes on. But once Boeing
8 Corporation lets out their employees, I guess at
9 whatever time they make shift change, it usually
10 starts dying down a little bit and then picks up
11 some more.

12 **Q** So is the Boeing plant west of Henquin on
13 Airport Road or east?

14 **A** It is west.

15 **Q** Okay. So the traffic from Boeing would be
16 on the north -- excuse me, the south side of the
17 street traveling east, correct?

18 **A** Correct.

19 **Q** And Mr. Moore was on the north side where
20 the westbound traffic would be, correct?

21 **A** Correct. But the traffic was both
22 directions.

23 **Q** That morning it was both directions?

24 **A** Yes. It was like rush hour.

25 **Q** Do you have an explanation as to why the

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 50

1 westbound traffic was heavy that morning as opposed
2 to all the other mornings in 2011 on Saturday
3 morning?

4 A No, sir.

5 Q Was the traffic heavy when you arrived?

6 A Yes. We were actually directing traffic
7 around us.

8 Q Okay. Where was Mr. Moore located at the
9 time that you arrived on the scene?

10 A He was in the -- right at the edge of the
11 roadway in the westbound lane closer to the curb.
12 Not in the middle of the roadway, but closer to the
13 curb.

14 Q I'm going to hand you what's been marked
15 Exhibit 22A and ask you if you would put the number
16 1 where you just described Mr. Jason Moore being
17 when you arrived at the scene. If you'd put a 1 and
18 circle it.

19 A (Witness complied.)

20 Q And maybe you would put your initials out
21 to the right of that, please.

22 MS. SHAFATIE: And I'm sorry, did you say
23 when he arrived where Mr. --

24 Q (By Mr. Dowd) When Mr. -- when
25 Lieutenant -- when the lieutenant arrived, he just

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 51

1 testified he saw him on the ground. And I'm -- he's
2 put a number 1 where you saw him on the ground,
3 correct?

4 A Yes.

5 Q And which way was his head pointing
6 towards? Was his head closer to the street or his
7 feet closer to the street?

8 A He was at an angle. I would have to say
9 his feet were closer to the street. But I can't be
10 one hundred percent positive.

11 Q Okay. That's the best of your
12 recollection today?

13 A Correct.

14 Q Can you indicate with a number 2 where
15 Officer Kaminski was standing in relation to
16 Mr. Moore?

17 A (Witness complied.)

18 Q And then with a number 3 Officer White,
19 please.

20 A (Witness complied.)

21 Q And what position was Officer White in at
22 that time when you first observed him?

23 A Officer White was turned towards the
24 traffic lanes facing -- as was Officer Kaminski.
25 They were both standing, looking -- I guess that

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 52

1 would be the south -- looking south --

2 Q Okay.

3 A -- on the westbound lanes.

4 Q Okay. Was Officer White standing straight
5 up by the time you arrived or was he still finishing
6 his handcuffing to the best of your recollection?

7 A I believe he was just starting to stand
8 up. He was -- he was not in the middle of
9 handcuffing.

10 Q Okay. Maybe just finishing and standing
11 up?

12 A Just finishing up possibly.

13 Q And Officer Bebe has previously testified
14 in this case that he was on the scene. But you've
15 testified you weren't sure either way. So can you
16 tell us where he was? I mean, that's maybe the
17 worst question I've ever asked in a deposition,
18 but -- because you just said you don't know. Is it
19 safe to say you can't tell us where Officer Bebe was
20 standing when you arrived at the scene?

21 A No, I can't tell you where he was
22 standing.

23 Q If you would --

24 A Did you want initials by the 3 and the 2?
25 I'm sorry.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 53

1 Q No, we're just going to use this for you.
2 But I just wanted your initials on there somewhere.
3 Thank you, though. If you would, if you could put a
4 line, if it's visible on the exhibit, where the
5 front of Officer Kaminski's patrol car was.

6 A I am not sure.

7 Q Okay. Is it -- do you think it would have
8 been in this picture or --

9 A To the best of my recollection, there was
10 a police vehicle parked over here, but I'm not
11 exactly sure whose police vehicle that would have
12 been --

13 Q Okay. Let's do it this way --

14 A -- in the parking lot.

15 Q Yeah. If you would put a line and a
16 number 4 where you thought the front grill -- and if
17 you would draw the line in the angle that the front
18 grill would have been in, and we'll understand you
19 don't know which officer's vehicle it was.

20 A (Witness complied.) And a number 4, you
21 said?

22 Q Yes. Maybe -- yeah, go ahead. If you
23 could make that line a little longer so maybe it's
24 closer to proportionate with the front of his
25 vehicle to the other things in the scene.

1 **A** Well --

2 **Q** And I'm not going to hold you to the
3 proportional part. But it's more visible if it's
4 longer, please.

5 **A** (Witness complied.)

6 **Q** Thank you. So the back of his car would
7 have been closer to the building that's on that
8 corner?

9 MS. SHAFAT: I'm just going to make sure
10 that when you're saying his car, again, he --

11 MR. DOWD: I'll rephrase.

12 **Q** (By Mr. Dowd) The patrol car that you've
13 indicated there as number 4 on Exhibit 22A --

14 **A** Correct.

15 **Q** -- is the front. So the car would be
16 facing towards Henquin?

17 **A** The building.

18 **Q** It was facing towards the building?

19 **A** Correct.

20 **Q** Okay. So the rear of the car would be
21 facing either towards Henquin or Airport?

22 **A** Sort of at an angle, I believe, if I
23 remember correctly.

24 **Q** Towards the corner?

25 **A** Yes.

1 Q Okay. If we could go back to Exhibit 12
2 and your use of force report at Ferguson 0015, the
3 next sentence states, quote, Officer Kaminski told
4 Moore to place his hands over his head and walk
5 towards him, period, closed quotes.

6 Did I read that correctly?

7 A Yes.

8 Q That's information you would have received
9 from Officer Kaminski?

10 A That is correct.

11 Q Do you know why he told him to put his
12 hands over his head?

13 A I don't have any idea.

14 Q At this point in time, you had not -- you
15 were trying to get to the scene. You're looking for
16 Mr. Moore and you've heard a dispatch by this time
17 that he's on -- Kaminski is on scene, right?

18 A Correct.

19 Q At this point in time, you have not heard
20 any report of any persons being injured, correct?

21 A Correct.

22 Q No reports of a -- no reports of a weapon,
23 correct?

24 A Correct.

25 Q No reports that he's threatened his wife

1 or any family members or neighbors, correct?

2 A Other than coming out into traffic and
3 beating on the cars, no.

4 Q Okay. But do you know if any of those
5 cars were driven by his neighbors or his family?

6 A No, sir, I don't.

7 Q My question was, you did not have any
8 reports of any domestic violence with regard to his
9 family or neighbors, correct?

10 A Not to my recollection.

11 Q And if the man is naked and he's not
12 reported to have a gun or any weapon at the time
13 Officer Kaminski arrives at the scene per this
14 report staring out at Airport Road, correct?

15 A Correct.

16 Q So he's not running at that time, correct,
17 per the report?

18 A Per the report.

19 Q Okay. Is it your opinion that it's
20 consistent with deescalation training to immediately
21 shout orders to a person who's having a personal
22 crisis or mental health issues?

23 MS. SHAFAT: Object to form and
24 foundation. You may answer.

25 A Well, having had deescalation training

1 now, that would probably not be the first thing that
2 you would want to do. At that time, though, we had
3 no deescalation training.

4 Q (By Mr. Dowd) So the next sentence states,
5 Moore began to yell and move towards Officer
6 Kaminski.

7 That information came from Officer
8 Kaminski, correct?

9 A That is correct.

10 Q Do you have any idea what Mr. Moore may
11 have yelled from any source?

12 A Except for what was told to me for the
13 report. Other than that, I have no idea.

14 Q All right. The next sentence reads,
15 quote, Officer Kaminski told Moore to stop and get
16 on the ground but Moore continued to advance,
17 period, closed quotes.

18 I read that correctly, sir?

19 A That is correct.

20 Q And that is information you received from
21 Officer Kaminski?

22 A Correct.

23 Q The next sentence reads, quote, Officer
24 Kaminski backed away, comma, ordering Moore to stop,
25 comma, however Moore only began to run at Officer

1 Kaminski, comma, screaming and swinging his fists,
2 period, closed quotes.

3 Did I read that correctly?

4 A Yes, sir, you did.

5 Q And is that information that you would
6 have learned only from Officer Kaminski?

7 A Yes.

8 Q The next sentence is, quote, Officer
9 Kaminski then deployed his department-issued taser,
10 comma, striking Moore with a probe into his chest
11 and a probe into his right upper thigh area, period,
12 closed quotes.

13 I read that correctly?

14 A That is correct.

15 Q And Officer Kaminski provided that
16 information?

17 A Yes.

18 Q He's the sole provider of that
19 information?

20 A Yes.

21 Q It would be abusive department policy and
22 excessive force to tase a man in the chest who was
23 complying with his orders and standing perfectly
24 still?

25 MS. SHAFAT: Object to form and

1 foundation. You may answer.

2 **A** I'm sorry, could you ask --

3 MR. DOWD: Would you read that back,
4 please?

5 (The requested portion of the
6 record read by the reporter.)

7 MS. SHAFATIE: Objection.

8 **A** Yes, that would be abusive.

9 **Q** (By Mr. Dowd) And if Officer Kaminski
10 struck Mr. Moore in the chest, that would be center
11 body mass and be consistent with his firearms
12 training?

13 MS. SHAFATIE: Object to form. You may
14 answer.

15 **A** Yes.

16 **Q** (By Mr. Dowd) So it wouldn't have been a
17 bad shot necessarily if he's been practicing for
18 years, at least on an annual basis, to have his
19 muscle memory available to him in a reactive and
20 high pressured situation to draw his weapon, a taser
21 in this case, and aim and fire and hit center body
22 mass, correct?

23 MS. SHAFATIE: Object to form and
24 foundation. You may answer.

25 **A** Yes, you shoot for the largest part of the

1 body. And that's what Taser also teaches.

2 Q (By Mr. Dowd) Okay. Is that what they
3 were teaching in 2011? Taser, I mean.

4 MS. SHAFAT: Object to foundation. You
5 may answer.

6 Q (By Mr. Dowd) If you know.

7 A Yes, when we went to the Taser class, they
8 told us to shoot for the largest part of the body.

9 Q Okay.

10 A Preferably -- you know, you don't want to
11 shoot for genitalia, breasts, or anything like that.

12 Q Female breasts?

13 A Correct. But shoot for the biggest part
14 of the body because of the way the darts spread.

15 Q And what training -- you said you first
16 went to training. Which training would that have
17 been, what year or month?

18 A It would have been shortly after we were
19 issued the tasers and -- or, you know, after the
20 department received the tasers. Once we had all
21 those tasers, then each officer was certified in
22 them. Officer Kaminski was a taser instructor.

23 Q Okay. So he would have had even more
24 training than a certified user?

25 A Correct. He was certified by Taser

1 International to teach the officers.

2 Q Besides the training that you got on a
3 taser, were there also bulletins or warnings that
4 were given out?

5 A Not to my recollection.

6 Q Okay. So you're not familiar at the
7 Ferguson Police Department how taser warnings or
8 taser bulletins are distributed and communicated to
9 the officers that are certified as users or as
10 instructors?

11 A No, sir, I'm not.

12 Q Have you ever received an email from Taser
13 International with any training or bulletins?

14 A No, sir, I have not.

15 Q Have you received a handout from Officer
16 Brannan -- is he officer or sergeant? Officer
17 Brannan -- you know who Officer Brannan is, right?

18 A Correct.

19 Q And he was the lead taser -- head of sort
20 of the taser implementation and training?

21 MS. SHAFATIE: Object to foundation. You
22 may answer.

23 MR. DOWD: I'll withdraw it.

24 Q (By Mr. Dowd) Tell us your understanding
25 of what Officer Brannan's role was with tasers at

1 Ferguson Police Department.

2 **A** That he was one of the taser instructors
3 who were certified by Taser International. That's
4 all that I know.

5 **Q** And you don't receive -- you ever recall
6 receiving an email or a handout in your mailbox at
7 the department from Officer Brannon or anyone at the
8 Ferguson Police Department with bulletins or
9 warnings?

10 **A** Not to my recollection.

11 **Q** (By Mr. Dowd) I'm going to give you
12 Exhibits 19 and 20. I'm just asking you -- you can
13 page through them if you like. I'm just asking in
14 general if you've ever seen those documents before.

15 **A** I may have when I was first certified with
16 the taser, but I can't recall.

17 **Q** And when was that again, please?

18 **A** It would have been shortly after the
19 tasers were acquired by the department.

20 **Q** So if that was in June of 2010, it would
21 have been within a couple of months of that?

22 **A** Yes, sir.

23 **Q** Okay. So the second exhibit you're now
24 looking at, which I think -- is that Exhibit 20,
25 sir?

1 **A** Yes, sir.

2 **Q** What is the date on the lower left-hand
3 corner of that?

4 **A** That would be May 31st, 2011.

5 **Q** Okay. So that's approximately three and a
6 half months, three months prior to the incident
7 where Mr. Moore died?

8 **A** Yes, sir, I believe so.

9 **Q** And the Exhibit 19, the date on the lower
10 left corner is -- I think that's 2010?

11 **A** Correct, sir, May 1st, 2010.

12 **Q** So that's a year and a couple months prior
13 to this incident, correct?

14 **A** Correct.

15 **Q** And it's my understanding of your
16 testimony that you don't recall ever receiving
17 either of those two documents in the ordinary course
18 of your job duties at Ferguson Police Department.

19 **A** Unless this was part of the original
20 training, I have never had this in my mailbox to my
21 recollection.

22 **Q** Okay. I'll take those back. So if we
23 could go back to Exhibit 12, your use of force
24 report.

25 **A** Yes, sir.

1 **Q** On page 2, the next sentence is, quote,
2 Moore, comma, after initially falling to the ground,
3 comma, attempted to regain his feet and Officer
4 Kaminski ordered him to stay down, comma, and was
5 met with noncompliance, period, closed quotes.

6 That's what Officer Kaminski told you,
7 correct?

8 **A** That is correct, sir.

9 **Q** Did he -- the next question is -- or
10 statement, I should say, quote, Officer Kaminski
11 administered a second, comma, five-second burst
12 which placed Moore back on the ground, period,
13 closed quotes.

14 That was information supplied solely by
15 Officer Kaminski, correct?

16 **A** Yes, sir.

17 **Q** Did he tell you at any time how much time
18 lapsed between the first taser application and his
19 attempts to gain compliance and the second
20 application of the taser?

21 **A** I don't recall. I don't believe so.

22 **Q** Okay. Did anyone at the department ever
23 indicate to you that -- how long he waited?

24 **A** No, sir.

25 **Q** Officers Kaminski's report that we just

1 read into the record indicates that Mr. Moore was
2 put back on the ground, correct?

3 A Yes.

4 Q Would you agree that after the first taser
5 deployment that Mr. Moore was extremely unlikely to
6 be able to get back into -- to get to the street as
7 you indicated Officer Kaminski may have been in fear
8 of?

9 MS. SHAFAT: Object to form and
10 foundation. You may answer.

11 Q (By Mr. Dowd) Do you understand the
12 question?

13 A As if the taser didn't work? Is that what
14 you --

15 Q No, let me rephrase the question. You've
16 been in law enforcement, between the military and
17 law enforcement, since you were out of high school,
18 right?

19 A Correct.

20 Q Okay. Including many of those years is
21 use of force, when to use it, how to use it and the
22 effect of it, correct?

23 A Correct.

24 Q Would you agree that the situation from
25 the time Mr. Moore was standing by the curb where

1 you've indicated he on Exhibit 22A to the time after
2 Officer Kaminski tased him the first time that that
3 situation had drastically changed?

4 MS. SHAFAT: Object to form and
5 foundation. You may answer.

6 A I'd have to speculate because I wasn't
7 there.

8 Q (By Mr. Dowd) Well, he's no longer
9 standing on the curb facing Airport Road, correct?

10 A Correct.

11 Q He's now on the ground, correct?

12 A Correct.

13 Q He's now further away from Airport Road
14 than he previously had been, correct?

15 MS. SHAFAT: Object to form. You may
16 answer.

17 A Yes.

18 Q (By Mr. Dowd) Based on your indication --

19 A Right.

20 Q -- on Exhibit 22 --

21 A That's correct.

22 Q -- he's further away from the road. Okay.
23 He's on the ground?

24 A Correct.

25 Q You agree that Mr. Moore was a slightly

1 built man?

2 A Yes.

3 Q Okay. So the threat to himself going into
4 traffic has been extremely reduced, correct?

5 MS. SHAFATIE: Object to form.

6 Q (By Mr. Dowd) You'd agree with that?

7 MS. SHAFATIE: Object to form. You may
8 answer.

9 A Again, not having -- having not been
10 there --

11 Q (By Mr. Dowd) I'm not asking you -- I'm
12 just -- assume what I'm telling --

13 A Assuming that everything is --

14 Q That I'm saying is accurate.

15 MS. SHAFATIE: Same objection.

16 Q (By Mr. Dowd) That he's on the ground,
17 he's unarmed, he's no longer standing facing staring
18 into Airport Road. He's got taser probes, one in
19 his chest and one in his groin area. It's been
20 effective. It brought him down the first time.
21 Assume the probes are still in his chest. Wouldn't
22 you agree that that threat assessment, the threat to
23 himself and the threat to the officer, has changed
24 and has become -- he's become less of a threat by
25 some degree?

1 MS. SHAFAT: Form. You may answer.

2 A At that moment --

3 Q (By Mr. Dowd) Go ahead, sir, you can
4 answer.

5 A At that moment, yes. But tasers don't
6 always work.

7 Q I understand. You understand it was
8 working -- the first application brought him down,
9 correct?

10 MS. SHAFAT: Object to form. You may
11 answer.

12 A Yes.

13 Q (By Mr. Dowd) They are designed to
14 incapacitate the muscles and sensory system of the
15 person they're being used on, right?

16 A That's right.

17 Q It appears to have worked effectively?
18 Wide spread of the probes is desired, right?

19 A Yes.

20 Q He had the wide spread of the probes,
21 correct?

22 A Yes.

23 Q Probes are still in place after the first
24 tase because we know he was able to tase him again
25 and he dropped again, right?

1 **A** Correct.

2 **Q** So after each use of force, an officer is
3 to do an on-the-spot threat assessment, correct?

4 MS. SHAFATIE: Object to foundation. You
5 may answer.

6 **A** Yes.

7 **Q** (By Mr. Dowd) For example, if a guy throws
8 a punch at a policeman and he has to use his baton
9 on him, once the guy is down you don't get to just
10 keep hitting him because he threw a punch, right?

11 **A** That's correct. You don't just keep
12 beating on him, right.

13 **Q** The guy's on the ground, he's no longer
14 swinging at me --

15 **A** It's over.

16 **Q** It's over, okay. And I understand your
17 position that Mr. Moore is on the ground and
18 you're -- let me rephrase the question. So at the
19 time that Mr. Moore is on the ground with the taser
20 probes in his chest and his groin with the wide
21 spread, it's proven to be effective on the first
22 application as he's advancing aggressively,
23 according to Officer Kaminski, to stop him and bring
24 him to the ground, correct?

25 **A** Correct.

1 **Q** That threat assessment has to be redone by
2 the officer before using an additional type of
3 force?

4 MS. SHAFATIE: Object to foundation.

5 **Q** (By Mr. Dowd) Do you agree with that?

6 MS. SHAFATIE: You may answer.

7 **A** Yes.

8 **Q** (By Mr. Dowd) He certainly -- Officer
9 Kaminski certainly wouldn't have been authorized to
10 use escalated force, use his side arm, correct?

11 **A** No, he wouldn't have been authorized to
12 use his side arm.

13 **Q** At any time that day, correct?

14 MS. SHAFATIE: Object to form. You may
15 answer. You may answer.

16 **Q** (By Mr. Dowd) Based on the facts as you
17 understand them.

18 **A** No, he wouldn't have been -- wouldn't have
19 been authorized to use that.

20 **Q** He would have been authorized to use an
21 alternative type of force, a wrist lock, arm lock,
22 baton maybe, or mace if he didn't have the personal
23 allergy, correct?

24 **A** Yes.

25 **Q** Other non-lethal use of force. He could

1 have applied that, correct?

2 A Correct.

3 Q Do you agree that setting aside officer
4 Kaminski's personal reaction to mace that it would
5 have been within Ferguson policies and procedures to
6 have used mace or OC spray on Mr. Moore as he was
7 advancing towards Officer Kaminski?

8 MS. SHAFATIE: Object to form. You may
9 answer.

10 A Yes.

11 Q (By Mr. Dowd) It would have been
12 permissible to use a baton strike?

13 A Yes.

14 Q It would have been permissible to use a
15 hands-on form of force, either combat maneuvers or
16 arm locks or some other hands-on use of force,
17 correct?

18 A Correct.

19 Q Each of those uses of force that we've
20 touched on have pros and cons, correct?

21 MS. SHAFATIE: Object to form. You may
22 answer.

23 A Yes.

24 Q (By Mr. Dowd) Okay. For example, mace is
25 pretty much of a con for Officer Kaminski, right?

1 **A** Yes, sir, it is.

2 **Q** But is there anything you can say about if
3 he had used his baton to bring that man to the
4 ground or some kind of a throw? I've seen in the --
5 I've seen in the use of force reports that some
6 officers used other takedown procedures. Is there
7 any reason he couldn't have just used a takedown
8 procedure to get him down?

9 MS. SHAFAT: Object to form. You may
10 answer.

11 **A** Just standing back looking at it, I really
12 couldn't answer that honestly because I don't know
13 exactly what was happening at that moment.

14 **Q** (By Mr. Dowd) Well --

15 **A** If someone -- if someone is -- speaking
16 from my experience, when someone is advancing on me
17 fast, I am not going to wrestle around or, you know,
18 possibly allow my side arm to be taken or anything
19 else if I can help it. If I have other tools I will
20 use those tools.

21 **Q** Okay. Mace, baton, taser?

22 **A** Correct.

23 **Q** Okay. So based on your last answer, if
24 someone's approaching you aggressively, I understand
25 what you're saying. Change that scenario to

1 somebody who's now on the ground, has just had
2 50,000 volts of electricity put into his body to
3 contract his muscles somewhere from 16 to 22 times
4 muscle contractions per second. And I want you to
5 assume that it was 11 seconds of taser application
6 that he underwent, okay? That's a different
7 scenario as far as getting into a wrestling and
8 lowering your weapon, would you agree with that, than
9 somebody who is standing free, not being tasered and
10 running towards you? That's a different scenario?

11 MS. SHAFAT: Object to form. You may
12 answer.

13 A Yes.

14 Q (By Mr. Dowd) Is there anything preventing
15 Officer Kaminski after the 11-second initial tasing
16 application from putting an arm lock on him, putting
17 a wrist lock on him and keeping him on the ground
18 until Officer White arrives?

19 MS. SHAFAT: Object to form and
20 foundation. You may answer.

21 Q (By Mr. Dowd) Anything in department
22 policy that would prohibit that?

23 MS. SHAFAT: Same objection.

24 A No, there's nothing in policy that would
25 prohibit that.

1 **Q** (By Mr. Dowd) Okay. Is there anything in
2 your experience that you think would make that
3 unadvisable?

4 **A** The -- if the subject is still combative
5 or resisting, then continue to use your tool. I
6 don't want an officer to get injured. I tell my
7 officers that, do not get hurt. If you -- there's
8 no reason -- you know, we're not there to be hurt.
9 There's no reason not to use the tools that are
10 available to you. So if someone continues, then no.
11 If -- but as I said before, once the resisting
12 stops, it's over, it's done, go ahead and apply the
13 handcuffs and --

14 **Q** I understand that it's your position and
15 it's the policy of the department that taser, baton,
16 mace are all in the same class of non-lethal force,
17 correct?

18 **A** Yes.

19 **Q** And they're also equally available to the
20 officer based on the officer's discretion?

21 **A** That is correct.

22 **Q** Okay. Within those three, do you
23 understand there to be any greater risk to the
24 person who's being the recipient of this use of
25 force as between taser, OC spray and a baton?

1 MS. SHAFAT: I'm going to object to form.

2 And you can answer.

3 Q (By Mr. Dowd) Do you understand the
4 question?

5 A Of those three, which would be the --

6 Q -- riskiest for the person who's receiving
7 the use of force, yes.

8 MS. SHAFAT: Same objection.

9 Q (By Mr. Dowd) Do you understand the
10 question though?

11 A I believe so.

12 Q Yes.

13 A Yes, the taser would be the riskiest, I
14 would believe.

15 Q And why is that?

16 A Well, I'm -- I mean, I've been
17 certified -- or trained on the taser. But
18 50,000 volts, to me, is a lot. I've never been
19 tased. But I've seen the videos and -- during
20 training. It just seems like that's -- you know,
21 for it to contract your muscles like that, that's a
22 lot.

23 Q It's powerful?

24 A It is powerful. That's the word I was
25 looking for.

1 **Q** And -- because it's electricity and it's
2 near the heart, are you aware that it can have
3 unintended effects on the heart rhythm?

4 MS. SHAFAT: Object to form and
5 foundation. You may answer.

6 **A** I'm not exactly sure about the taser as
7 far as the medical aspects of it go. But any use of
8 force, there's a danger and risk. If you use your
9 baton you could miss an arm strike and hit someone
10 in the head. If you go to do an arm bar and take
11 someone to the ground, they could strike their head.
12 I mean, there's a risk involved with everything.

13 **Q** (By Mr. Dowd) Understood. But is it your
14 opinion that the use of the taser has a -- at least
15 in the order I gave them to you, the taser has
16 slightly more risk for the person it's being used on
17 but it's safer for the officer than the other uses
18 of force you just mentioned?

19 MS. SHAFAT: Object to form. You may
20 answer.

21 **A** I believe so just because it's more
22 powerful.

23 **Q** (By Mr. Dowd) If we could go back to
24 Exhibit 12, sir, your use of force report at
25 Ferguson 15. I believe we left off with the second

1 taser application, so I'll read the next sentence.
2 Quote, Moore again tried to raise up and a third
3 five-second burst was administered, comma, again
4 placing Moore back onto the ground, period, closed
5 quotes.

6 That's information you received from
7 Officer Kaminski?

8 A That is correct.

9 Q Okay. It indicates that the taser was
10 working properly because it put the man back on the
11 ground, correct?

12 MS. SHAFATIE: Object to form. You may
13 answer.

14 A Correct.

15 Q (By Mr. Dowd) And it was having the effect
16 that you had been trained to look for to make sure
17 it's working so you don't have to change to another
18 use of force, right?

19 A That is correct.

20 MS. SHAFATIE: Form. You may answer.

21 MR. DOWD: Can I ask what's wrong with the
22 form?

23 MS. SHAFATIE: Argumentative.

24 MR. DOWD: Okay.

25 Q (By Mr. Dowd) Do you know what compliance

1 interval is? Sometimes I've heard it used, a phrase
2 submission assessment. Do you know what either of
3 those two terms mean?

4 **A** No, sir.

5 **Q** Let me ask you based on your training and
6 experience what an officer is to do after he applies
7 force, for example, a taser or a baton strike before
8 using another application of force.

9 **A** You assess and make sure the first
10 application worked.

11 **Q** Okay. And how much time do you generally
12 use per your training to assess that situation?

13 MS. SHAFATIE: Object to form. You may
14 answer.

15 **A** It depends on the situation, how fluid and
16 violent it is. But it could be instantaneous to
17 seconds.

18 **Q** (By Mr. Dowd) Okay. Depending on the
19 level of threat?

20 **A** Correct.

21 **Q** Okay. So based, you know, on your
22 experience as a -- based on your experience as a
23 supervisor of patrolmen through their sergeants and
24 directly, in the situation that -- I'm asking you to
25 assume, and it's mostly based on what you've told me

1 and we've agreed to, but that the gentleman is on
2 the ground after a second taser application, the
3 taser appears to be working, being effective and
4 putting him on the ground. He's no longer -- has a
5 less likely threat to run into traffic, correct?

6 MS. SHAFATIE: Object to form. You may
7 answer.

8 A Correct.

9 Q (By Mr. Dowd) How long should a person
10 who's in this situation, who's known or appears to
11 be in personal crisis, having mental issues, to be
12 given to comply before another 50,000 volts of taser
13 application would be appropriate?

14 MS. SHAFATIE: Object to form. You may
15 answer.

16 A I wouldn't want to say how much time
17 because each person's different. I don't know what
18 Officer Kaminski's mindset was or anything. And I
19 would not tell one of my officers if this doesn't
20 work you wait 10 seconds, you know, to see if it's
21 going to work. That's -- each individual officer
22 has to make that decision.

23 Q (By Mr. Dowd) Okay. Back to our scenario
24 where a guy throws a punch at an officer and he hits
25 him with a baton, the guy goes down, he's not

1 allowed to just strike him again and again and
2 again, correct? He's supposed to strike him,
3 hesitate to see what the reaction is, right?

4 A Yes.

5 Q If the guy's -- if there's a gun nearby,
6 that's a different threat level than if it's just a
7 guy who's been drinking and he's laying on the
8 ground, his keys have fallen on the ground. You
9 assess that unique threat, correct?

10 A Yes.

11 Q If there's a gun in the baton scenario,
12 maybe you go ahead and hit him immediately again
13 just to make sure he can't get to the gun. If
14 there's no gun, you maybe give him a second longer,
15 correct?

16 MS. SHAFATIE: Object to form. You may
17 answer.

18 A Yes. You assess as you go along with it.

19 Q (By Mr. Dowd) Okay. And you reassess the
20 best you can between each use of force application?

21 A Yes, you should.

22 Q Okay. And sometimes it takes time to make
23 that assessment?

24 A Yes.

25 Q I want you to assume that Officer Kaminski

1 is aware that Officer White is approaching the scene
2 after the second taser application, either knows
3 through his dispatch or he sees his car coming or
4 hears his car coming, that he knows Kaminski is on
5 route, okay, and that he knows prior to the
6 second -- excuse me, he knows prior to the third
7 application that Kaminski is on scene.

8 MS. SHAFAT: I think you mean White.

9 MR. DOWD: Yes, let me rephrase.

10 Q (By Mr. Dowd) I want you to further assume
11 that Officer Kaminski is aware that Officer White is
12 on scene or will be on scene within the next ten
13 seconds. Can you assume that for me?

14 A Yes, sir.

15 Q This is prior to the third taser
16 application. And again, the man is on the ground.
17 He's attempting to get up. He's unarmed. He's
18 naked. Would you agree that those factors, the fact
19 that Officer White is on scene or almost immediately
20 on scene, changes the threat assessment analysis?

21 MS. SHAFAT: Object to form. You may
22 answer.

23 A Yes.

24 Q (By Mr. Dowd) Because now you have backup,
25 right?

1 **A** Correct.

2 **Q** Less risky to try to use a physical move,
3 arm long or something to press him down, when you've
4 got another officer present?

5 **A** Yes.

6 **Q** And you would agree that that would have
7 allowed Officer Kaminski more time between taser
8 applications if he in fact knew that Officer
9 Kaminski was on scene or almost immediately on
10 scene?

11 MS. SHAFATIE: Object to form. You may
12 answer.

13 **A** Yes, if Officer Kaminski knew all those
14 things.

15 **Q** (By Mr. Dowd) Okay. And that to avoid
16 using excessive force he could have and probably
17 should have hesitated longer in his threat
18 assessment if, in fact, he knew backup was very
19 close?

20 MS. SHAFATIE: Object to form and
21 foundation. You may answer.

22 **Q** (By Mr. Dowd) Do you agree with that?

23 **A** Yes.

24 **Q** Do you know the difference between a
25 cardiac arrest and a heart attack in general terms?

1 **A** No, sir.

2 **Q** Okay. Do you know if a taser is a risk to
3 cause a heart attack?

4 MS. SHAFAT: Object to foundation. You
5 may answer.

6 **A** I don't know for sure that it does. I
7 don't have that medical knowledge to --

8 **Q** (By Mr. Dowd) Okay. So would your answer
9 be the same if I asked you about a cardiac arrest
10 being caused by a taser?

11 **A** Yes, my answer would be the same.

12 **Q** So the next sentence back on Exhibit 12 at
13 Ferguson 15 is, quote, Officer White 560 arrived and
14 was able to pull Moore's arms behind his back and
15 handcuffed him, period, closed quotes.

16 I read that correctly?

17 **A** Yes, sir.

18 **Q** And was that information you received from
19 Officer Kaminski and Officer White, or do you
20 remember who provided that?

21 **A** It could have been both or -- definitely
22 one or the other.

23 **Q** Understood. Is there any reason for you
24 as you sit here today based on what we've discussed
25 and the facts as you understand them that Officer

1 White would not have been able to get Mr. Moore's
2 hands behind his back if he had been present between
3 the second and third taser applications?

4 MS. SHAFATIE: Object to form. You may
5 answer.

6 A Officer White by himself getting him --

7 Q (By Mr. Dowd) No, under this situation
8 with --

9 A With both --

10 Q Yes.

11 A Both officers and having been tased?

12 Q Twice, yes, sir.

13 MS. SHAFATIE: Same objection.

14 Q (By Mr. Dowd) You can answer.

15 MS. SHAFATIE: Oh, I'm sorry, you can
16 answer.

17 A Oh, yes, two officers should have been
18 able to get the handcuffs on Mr. Moore.

19 Q (By Mr. Dowd) Okay. How big a man is
20 Officer White?

21 A Well, not knowing exactly, I would say
22 Officer White is six-foot-one, 180 pounds.

23 Q Okay. So he's bigger than a guy that's
24 six-foot, 135 pounds?

25 A Yes.

1 **Q** And Officer Kaminski is approximately, to
2 your recollection, how big?

3 **A** Five-foot-eleven, six-foot. I don't know
4 what he would have weighed at that time. Hundred
5 and -- I'll say 180 pounds.

6 **Q** So if they are both 180 pounds, you have
7 approximately 360 pounds of professionally trained
8 police officers on scene, assuming he's on scene
9 either between a second and third tasing, or Officer
10 Kaminski knows he's immediately going to be on
11 scene. Do you understand?

12 MS. SHAFATIE: Object to form. You may
13 answer.

14 **A** Yes.

15 **Q** (By Mr. Dowd) And that's part of the basis
16 of your opinion that those two guys would have been
17 able to handcuff him without another tase if they
18 were both there?

19 MS. SHAFATIE: Form.

20 **A** Yes.

21 MS. SHAFATIE: You may answer.

22 **A** Yes. With everything being perfect, two
23 people like that should be able to get the handcuffs
24 on someone.

25 **Q** (By Mr. Dowd) I mean, you know better than

1 me. It's not perfect out there.

2 A No.

3 Q So what I'm asking is --

4 A That's why I find some of the questions
5 kind of hard.

6 Q I understand. And I respect that. And
7 I'm -- my point is that you guys got to do your job
8 in an imperfect situation, but there are training
9 and there are rules to protect the officer, rules to
10 protect the people that are being -- being either
11 tased or having force used on them by the police,
12 right?

13 A Yes.

14 Q So the next sentence says, quote, After
15 being handcuffed, comma, Moore tried moving his arms
16 again but stopped when Officer White told him to,
17 period, closed quotes.

18 Have I read that correctly?

19 A That is correct.

20 Q You believe that was told to you by
21 Officer White?

22 A Yes.

23 Q So it sounds like shortly after he was
24 handcuffed he stopped resisting.

25 A Yes.

1 Q Next sentence, quote, Officer White then
2 requested an ambulance and supervisor to respond,
3 period, closed quotes.

4 That was read that correctly?

5 A That is correct.

6 Q And that's the first time an ambulance was
7 called to your knowledge?

8 A Yes, sir.

9 Q And that's per department policy?

10 A Yes.

11 Q And tell me about that policy. What's
12 the -- what is the policy and what's the purpose of
13 the policy?

14 A The policy is the Ferguson use of force
15 report. It's based on -- once you have a resisting
16 that you want to have an ambulance respond to the
17 scene to check the arrested subject for any
18 injuries, that sort of thing, it's required by the
19 taser policy that an ambulance respond to the scene
20 of all tasings as well as a supervisor.

21 Q And do you know why that is per the taser
22 policies? Did they tell you why that's part of
23 their policies?

24 A I would imagine, and I'm guessing here
25 because I had no part in writing the policy --

1 Q Right.

2 A -- I'm only going to guess that because of
3 the application of the taser with the --

4 Q The electricity?

5 A Yes, and the removal of the darts.
6 They've always said that you can -- you know, they
7 teach the officer to remove the probes themselves.
8 However, they said that if you're uncomfortable with
9 that, you can ask medical personnel to do it.

10 Q And that's based on your understanding
11 from your training --

12 A Yes.

13 Q -- by Taser? That's yes?

14 A Yes.

15 MR. DOWD: Could we take a short break?

16 MS. SHAFAT: Sure.

17 VIDEOGRAPHER: Off the record at 11:08.

18 (Off the record.)

19 VIDEOGRAPHER: Back on the record at
20 11:15.

21 Q (By Mr. Dowd) Sir, if I could draw your
22 attention back to Exhibit 12, to pages -- if I could
23 direct your attention back to Exhibit 12 at Ferguson
24 15, the next sentence in your report is, quote, As I
25 approached Moore and the officers, comma, Moore let

1 out a raspy sound and appeared to stop breathing,
2 period, closed quotes.

3 Have I read that correctly?

4 A Yes, sir.

5 Q Do you know what -- sensitive question,
6 but have you been present when people have died in
7 the past?

8 A Numerous.

9 Q Okay. Did that raspy sound that you heard
10 from Mr. Moore, was that -- have you heard that
11 before in that situation?

12 A I had not heard that type of a sound --

13 Q Okay. Have you ever --

14 A -- from Mr. Moore.

15 Q Okay. Have you heard the phrase agonal
16 breathing before?

17 A No, sir.

18 Q I thought I read somewhere that you
19 thought that you may have heard his last breath.
20 Was that you that said that, that that raspy sound
21 was his last breath?

22 A I don't believe so.

23 Q Okay. Do you think -- was -- let me just
24 ask you then. Based on that statement that as you
25 approached the officers Moore let out a raspy sound

1 and appeared to stop breathing, is that the last
2 time you saw him breathe?

3 A Yes. When he made that noise, I turned
4 around and looked. And I noticed that he wasn't
5 breathing, and that's when Officer White --

6 Q Okay. That's the first time you noticed
7 he was not breathing?

8 A Yes, until then he had been --

9 Q -- to your knowledge, breathing?

10 A Yes.

11 Q Okay. So as you approached the officers,
12 I think you said when you got on the scene and got
13 out of your car Officer White was coming up from the
14 handcuffing and then you got up to the officers.
15 Then you heard this raspy breathing?

16 A Yes.

17 Q Next sentence says, quote, Officer White
18 released the handcuffs from Moore and said he's not
19 breathing. Those are in quotes, he's not breathing,
20 period.

21 Have I read that correctly?

22 A Yes, sir.

23 Q You would agree with that assessment?

24 A Yes.

25 Q Did he -- he was still on his stomach?

1 You called it a prone position?

2 A Yes.

3 Q So handcuffs were taken off, then he was
4 rolled over?

5 A I believe they rolled him before the
6 handcuffs came off, and that's when they checked to
7 make sure that he was not breathing.

8 Q Okay. How did they check to make sure he
9 was not breathing?

10 A Put their head down and -- you know, next
11 to his mouth.

12 Q Okay. And they confirmed he was not
13 breathing?

14 A Correct.

15 Q Removed the handcuffs, put him on his
16 back, and began chest compressions. Is that what
17 you observed?

18 A Yes, sir.

19 Q Okay. Did you notice anything about
20 Mr. Moore as far as his coloration? He's an
21 African-American gentleman, but were his lips
22 abnormally purple or blue, anything like that that
23 you noticed?

24 A No, sir.

25 Q And if you could, just in case I'm not

1 asking the right question, which does happen quite
2 often, could you just tell us as you were observing
3 Mr. Moore, Jason Moore, what you observed about his
4 face?

5 **A** He was extremely sweaty and devoid of any
6 expression on his face whatsoever.

7 **Q** Okay. Any bruising or marks on his face?

8 **A** Oh, I'm sorry, yes, he had like some
9 scratches on his face, I guess, or abrasions from
10 what I would imagine, because I wasn't there, was
11 when he was tased and went to the ground.

12 **Q** Were his eyes closed at that time when
13 they began the chest compressions, if you recall?

14 **A** I don't recall.

15 **Q** Okay. And you wrote in your report, I'll
16 try to summarize you, advised EMS to sort of
17 expedite because he's not breathing, right?

18 **A** Yes.

19 **Q** And then White and Bebe in some order did
20 chest compressions until the EMS arrived, correct?

21 **A** That's correct.

22 **Q** And so when the ambulance arrived, the
23 EMTs got out and took over the situation. Can you
24 just tell us what you observed as they got out as
25 they approached Mr. Moore, how that transition

1 occurred, what they did?

2 **A** They exited the ambulance, they brought
3 their medical equipment with them. As soon as they
4 came over they said we got it. The officers backed
5 up. I believe at that time there may have been
6 another ambulance -- or not an ambulance, another
7 paramedic that was with them on the truck.

8 **Q** Right.

9 **A** And they scooped up Mr. Moore and left for
10 the hospital.

11 **Q** Okay. Did they -- did they perform any
12 chest compressions before he got in the ambulance?

13 **A** Yes, sir. One was working the chest
14 compressions and the others were --

15 **Q** Okay. So they continued those while the
16 other two were picking up the stretcher and putting
17 it in the --

18 **A** Yes. There was -- there was never a break
19 in-between the officers and them. I mean, it was
20 just a perfect switch.

21 **Q** And except for maybe one -- excuse me, I'm
22 sorry to talk over you. Maybe besides one brief
23 incident when they physically put him and then
24 somebody jumped in and continued the chest
25 compressions?

1 **A** Even as they were putting him in the
2 ambulance, the one person walks alongside the gurney
3 still doing the chest compressions and the other
4 people lift the gurney and put it in. Those
5 commercial never stop.

6 **Q** Okay. Did you observe them at any time
7 put any pads, you know, like lead wires to a
8 monitor, a heart monitor or anything while he was
9 still on the ground or --

10 **A** No, sir, I didn't see any of that.

11 **Q** So when that happened, it likely happened
12 in the back of the ambulance?

13 **A** If that happened, yes. I never saw it
14 outside.

15 **Q** There's pictures of Mr. Moore with the
16 leads on him. So they must have had -- well, maybe
17 strike that. And my question is based -- again,
18 this is just on your knowledge. We'll talk to them
19 about what they did and when they did it.

20 **A** Correct. No, I understand.

21 **Q** You never observed them doing anything
22 except chest compressions and load him and get him
23 in the ambulance. Is that a fair statement?

24 **A** To the best of my recollection, yes.

25 **Q** As a supervisor, what did you do next as

1 part of your job responsibilities?

2 **A** Once the ambulance got there, I diverted
3 my attention from Mr. Moore and the ambulance to the
4 officers. I directed them to retrieve any
5 identification dots that are with the taser. When
6 it's deployed it sends the serial number out on
7 the --

8 **Q** The blaster and the little paper mache
9 type things?

10 **A** Right. Had them do that. Sent, I don't
11 know which officer, down to try and locate the
12 clothing that Mr. Moore had discarded and locate any
13 witnesses.

14 **Q** Okay. So then just tell me generally what
15 happened next as you were doing those things. You
16 sent the officers to canvass the neighborhood,
17 right?

18 **A** Yes.

19 **Q** Looking for witnesses. What did you
20 observe or hear next about this incident?

21 **A** I don't recall off the top of my head.

22 **Q** Okay. What's just the next thing you
23 recall? Did you hear --

24 **A** I don't remember. I believe I was on the
25 phone with Captain Henke notifying them that, you

1 know, we had had an incident. And I really don't
2 recall.

3 Q Yeah, okay. What would be -- after an
4 incident like this where a person was engaged with
5 the police and left in an ambulance like that,
6 what's the normal procedure for --

7 A Oh, I'm sorry, I sent Officer Bebe, I
8 believe, to follow the ambulance to the hospital.

9 Q Okay. Any other things that you would
10 normally do in a situation like that as part of your
11 supervisory responsibilities?

12 A Not to my knowledge.

13 Q Okay. Did you talk to Officer Kaminski at
14 the scene and get the information that we've just
15 been covering in Exhibit 12 in your use of force
16 report?

17 A Yes, at the scene, and I also spoke with
18 him at the station.

19 Q Okay. And did you have written notes that
20 you took while you were speaking to him or were you
21 typing this up as you went? Or tell us how that
22 worked.

23 A I don't recall.

24 Q Okay.

25 A I know that I spoke with him.

1 Q Sure.

2 A I don't recall if I had written notes or
3 not.

4 Q Okay. In any event, you would have
5 discard them after you finished your report?

6 A Yes. I don't keep my notes.

7 Q Is there an investigative file separate
8 from the police report file when there's a death?

9 A I have no knowledge of it.

10 Q Okay. Any special forms or procedures
11 when there's a death at the Ferguson Police
12 Department, automatic investigation, automatically
13 put the officer off on leave, anything like that?

14 A Not to my knowledge. We notify our
15 supervisor, who at that time would have been Captain
16 Henke, and advise him of the situation. And then I
17 guess he notifies the chief and it goes up the
18 chain, however that works, the chain of command.

19 Q Okay. Did you have any conversation with
20 Officer White at the station, or is everything in
21 your report from your conversation in the street?

22 A Everything's in the report from the
23 conversation.

24 Q At the street? I mean at Airport and
25 Henquin?

1 **A** Yes.

2 **Q** Did you review Officer White or Officer
3 Kaminski's reports prior to authoring your own
4 report?

5 **A** I briefly read through them. I didn't
6 approve them though. They weren't approved by me.

7 **Q** Okay. Is that -- I think Dilworth --

8 **A** Sergeant Dilworth approved, yes.

9 **Q** Approved at least one of them. So was
10 Sergeant Dilworth on duty that day?

11 **A** No, he was not.

12 **Q** Okay. So how would he have approved their
13 reports that are dated that day if he was not on
14 duty?

15 **A** That was a question that I had. And
16 Sergeant Dilworth had told me that -- he had just
17 recently been promoted. He was a brand new
18 sergeant.

19 **Q** Okay.

20 **A** He said, oh, I saw the report was in there
21 and I read it and just --

22 **Q** Signed off?

23 **A** Signed off on it.

24 **Q** Okay. So you understand -- your
25 understanding from that conversation and your

1 involvement in this scene was that Officer --
2 Sergeant Dilworth signed off on it just after
3 reading it? He didn't necessarily interview
4 Kaminski or --

5 A No, he didn't interview anyone. He just
6 signed off after reading the report and checking it
7 for -- you know, to make sure all the --

8 Q Okay. And so your use of force report is
9 primarily based on -- and let's talk about the first
10 two paragraphs that we've already gone through. I'm
11 not going to go through them again. The first two
12 paragraphs at Ferguson 15 in Exhibit 12 came from
13 Officers White and Kaminski exclusively, correct?

14 A Yes, sir.

15 Q And those are the facts that you relied on
16 when you made your report that's in the use of force
17 report, correct?

18 A Yes, sir, that and their written reports
19 and the police report.

20 Q And did you make a determination as far as
21 your responsibilities as to whether the use of that
22 force was appropriate?

23 A No, I did not.

24 Q Was it someone's responsibility at the
25 Ferguson Police Department to review the situation

1 and make that assessment?

2 A Yes, sir.

3 Q Who was that?

4 A That's sort of complicated.

5 Q Okay.

6 A If I could explain.

7 Q Just tell me how it works, please.

8 A If it's a use of force where we -- it's
9 basically a wrestling match scenario, I read the
10 report, I look at it, and I will check off the block
11 that says we followed policy or procedures, yes or
12 no.

13 Q So let's go to that previous page of
14 Exhibit 12, which is Ferguson 14. I think that's
15 what your talking about. You'd go through --

16 A Yes, sir.

17 Q -- this form report first? Okay. And
18 this one's dated 09/17/11. The time is 06:46.
19 That's the time of the call?

20 A Correct.

21 Q Okay. So as you described it in a general
22 sense, in a wrestling match situation you'd go
23 through and check all the appropriate boxes,
24 correct?

25 A That is correct.

1 Q Okay. And in this case, you checked the
2 use of force incident involves -- you checked both
3 advanced taser used and injured arrestee?

4 A That is correct.

5 Q And what does that refer to, injured
6 arrestee?

7 A That anyone who has been arrested, whether
8 they had visible injuries or they are just claiming
9 injury, that's what that refers to.

10 Q So everybody who resists, you check that
11 box?

12 A If they say that they were --

13 Q -- injured or you can observe that they
14 were injured?

15 A Correct.

16 Q Okay. So for Mr. Moore, that may have
17 been simply the taser prongs? Would that be
18 considered an injured arrestee if he had not died?

19 A No.

20 Q I guess the bruises on his face?

21 A The bruising or the abrasions on the face
22 and the knees, and I'm not sure wherever he had
23 them.

24 Q But that would have all constituted an
25 injured arrestee and you would have checked that box

1 even if he had not died, correct?

2 A Yes.

3 Q That's your signature at the bottom of
4 that page?

5 A Yes, it is.

6 Q Okay. And you filled that report out on
7 the 17th of September, 2011?

8 A Yes, I did.

9 Q Is this a -- I interrupted you because I
10 remembered I wanted to cover that page with you.
11 But tell us the procedure for how it's determined
12 whether an officer's use of force was within policy
13 and procedures of the general orders of Ferguson
14 Police Department.

15 A I look at the -- like I said, on the
16 smaller incidents, a wrestling match, fist fight,
17 that sort of thing, I look at whether or not the
18 officer followed the force continuum, if he used the
19 appropriate levels of force. Basically I do the
20 investigation. If it's something that I think may
21 have a further investigation attached to it, I let
22 that go forward. I send the report without
23 checking --

24 Q Any boxes?

25 A Correct, because it still has to go up

1 through the captain and everybody. And I'll let
2 them make that determination.

3 Q Okay. And in this case, did the -- did
4 Jason Moore's use of force report go to the captain?

5 A Yes, it was sent up to his office, I
6 guess, because --

7 Q And tell me which captain, please.

8 A That would be Captain Henke.

9 Q Okay.

10 A He was in charge of the patrol division.

11 Q And to your general knowledge, what would
12 have happened next?

13 A To the best of my knowledge, according to
14 policy, after Captain Henke reviews it and
15 determines that it was, you know --

16 Q Lawful force?

17 A Right, lawful use of force, he -- or not
18 lawful, whichever it would be, he forwards that then
19 to the chief's office.

20 Q Okay.

21 A And what they do there, I have no idea.

22 Q Are you aware of what the determination
23 was in this case?

24 A No, sir, I don't.

25 Q Are you aware if -- are you aware if

1 Sergeant -- excuse me, Captain Henke interviewed
2 yourself or Officer White or Officer Kaminski?

3 A Other than speaking with Captain Henke on
4 the phone that morning about it and briefly telling
5 him about the incident as I knew it, no, there were
6 no other interviews.

7 Q Where would the paperwork or reports be on
8 Captain Henke's determination as to the lawfulness,
9 I'll say, of the use of force by Officer Kaminski
10 and Officer White, whatever the determination was?

11 MS. SHAFATIE: Object to foundation. You
12 may answer.

13 A According to policy, it would be with the
14 chief's office. And I have no idea what they do
15 with it once --

16 Q (By Mr. Dowd) Okay.

17 A Again, I'm in the basement.

18 Q If you -- if you elevated from your
19 review -- as you say, if it's sort of an easy one
20 that you know what happened and you're confident
21 it's what happened and you're just -- it ends with
22 you, if it's something maybe more serious or
23 you're -- it's unclear as to the level of force and
24 appropriateness, you send it up without filling out
25 a use of force report to Captain Henke, correct?

1 **A** No, sir. I send out -- I fill out a use
2 of force on all incidents.

3 **Q** Thank you.

4 **A** I'll leave the -- there's a block that
5 says officer's actions comply with department
6 policy.

7 **Q** Okay.

8 **A** If it's something that, you know, is
9 serious then I leave that to their discretion.

10 **Q** Okay. And this is one of those cases that
11 you left to their discretion?

12 **A** I believe so, yes, sir.

13 **Q** And you've never heard whether they found
14 it to be appropriate or inappropriate use of force
15 or conduct that was -- that the actions complied
16 with department policy?

17 **A** No, sir, I never heard anything else.

18 **Q** Is Captain Henke's -- would his decision
19 ever be final or would it always have to be reviewed
20 by the chief?

21 **A** I'm not sure if his is the final word or
22 not.

23 **Q** Okay.

24 **A** I couldn't speak to that.

25 **Q** If there was discipline involved, it would

1 require the chief's involvement. Is that a fair
2 statement?

3 A Yes.

4 Q Okay. After you called Captain Henke and
5 completed your reports, your report, that's sort of
6 like the next day, do you recall anything else
7 occurring to your knowledge with regard to Jason
8 Moore's death, your involvement or anything you
9 heard at the department?

10 A No, sir, I don't recall.

11 Q When did you learn that Mr. Moore had
12 died?

13 A Probably within -- I would guess 30
14 minutes or so after he went to the hospital.
15 Officer Bebe called me and told me that Mr. Moore
16 had passed.

17 Q Any procedures that required you as the
18 lieutenant to take any actions in that situation
19 once you had been notified of a death?

20 A No, sir, other than notify the chain of
21 command, Captain Henke, and at that time I believe
22 he was making the determination on who -- you know,
23 each person has their own person that they are
24 supposed to notify. So I don't know who was in his
25 chain of command at that time other than ultimately,

1 I suppose, the chief.

2 Q Okay. Have you ever spoken to Tina Moore?

3 A I don't recall.

4 Q Okay. Have you ever spoken to Delores
5 Moore, Jason's mother?

6 A I don't recall.

7 Q Okay. Have you ever spoken to anyone that
8 you believed was a member of the Moore family?

9 A Not to my recollection.

10 Q Other than what you may have heard from
11 your attorneys, one of whom is here today, have you
12 heard anything else at the department about
13 Mr. Moore's -- the incident involving Mr. Moore in
14 which he died?

15 A No, sir.

16 Q Didn't come up at a staff meeting or
17 anything like that?

18 A Not that I recall.

19 Q It's my understanding from Officer
20 Kaminski's testimony that he was sent home after he
21 completed his report.

22 A Yes, sir.

23 Q Okay. And was that you that sent him
24 home?

25 A Yes, sir, I did.

1 Q Okay. And that was because you had
2 learned that the man had died?

3 A Yes, sir.

4 Q Okay. And that's custom and practice?

5 A Yes, sir. I send each of my officers,
6 depending on the severity of the resisting -- I
7 mean, whether a person dies or not, if it's a -- if
8 it's just a shoving match basically or a fist fight,
9 no, you don't get the day off. If it's something
10 more serious, you're involved with gun play or some
11 critical event, then I send them home with pay
12 without -- usually without the chief's approval or
13 anything else.

14 Q Understood. Okay. If you would go to
15 page 12 -- or Ferguson 12 on Exhibit 12, is that the
16 taser report that you referred to at the beginning
17 of the deposition that you had reviewed prior to
18 your deposition?

19 A Yes, sir, that appears to be the Taser
20 International use report.

21 Q Okay. You're the on-scene supervisor
22 noted here and Officer Kaminski is the tasering --
23 taser -- tasering, is that the way you guys say,
24 tasering or tases? Let me start the question over.
25 I'll try to move through this a little more quickly.

1 So Officer Kaminski's named in this report as the
2 officer who used the taser and you're the supervisor
3 on scene, right?

4 A That is correct, sir.

5 Q And they have the taser serial number
6 571300, correct?

7 A That is correct.

8 Q And Christian Hospital is where he was
9 taken and Dr. Patel took over care there. Is that
10 correct?

11 A Oh, yes, sir. Sorry.

12 Q Thank you. That's all right. So it says
13 nature of the call or incident, and you've written
14 in there suspicious person, correct?

15 A That is correct.

16 Q And what do you mean by that?

17 A That's just a term that we use. It's sort
18 of a catch-all for -- it could -- a suspicion person
19 could be someone who's acting strangely. They could
20 be standing at the back of a building where they've
21 never been before, just anything suspicious.

22 Q Okay.

23 A That's how the -- that's just part of what
24 we use.

25 Q Okay. Other options would be domestic,

1 right, a domestic situation?

2 A Correct, traffic stop, domestic, that sort
3 of thing.

4 Q So this is sort of a neutral,
5 non-criminal --

6 A Correct, because that's the way we had
7 originally sort of received that call is a
8 suspicious person until it's classified different.

9 Q Running naked and taking off his clothes
10 and -- that's suspicious behavior, right?

11 A Yes, sir.

12 Q Okay. So then the charges, assault third,
13 paren, small c, closed paren, indecent exposure.
14 Did I read that handwriting correctly?

15 A Yes, sir.

16 Q What does the (c) after assault third
17 mean?

18 A City charge.

19 Q Okay. So that would be an ordinance
20 violation?

21 A Yes.

22 Q Same with an indecent exposure, it's an
23 ordinance violation?

24 A Correct.

25 Q Was he -- he was never formally charged,

1 correct?

2 **A** That is correct.

3 **Q** What's that word right after it? The
4 writing goes over it and I can't read it.

5 **A** Booked, yes or no.

6 **Q** And it was no. If it was determined that
7 Mr. Moore was having mental health issues or
8 personal crisis and he had not died, is it likely he
9 wouldn't have been charged with indecent exposure?

10 MS. SHAFAT: Object to form and
11 foundation. You may answer.

12 **A** Yes, I don't believe I would have
13 charged --

14 **Q** (By Mr. Dowd) Sought a warrant? You
15 wouldn't have sought a warrant or anything like
16 that?

17 **A** That's correct.

18 **Q** What about the assault third? If he had
19 not died from the -- assuming died from the third
20 taser application, would you have charged him with
21 assault third that city misdemeanor ordinance
22 violation?

23 **A** Yes.

24 **Q** Because the taser had to be used?

25 **A** Because the taser had to be used and he

1 didn't -- he charged the officer.

2 Q Okay. Is there anything on this report
3 when you reviewed it this morning or whenever you
4 reviewed it that you thought was inaccurate or
5 wanted to change? And I'm talking about the taser
6 use report.

7 A No, sir.

8 Q And where did you get the information
9 regarding his age? Obviously you observed his sex.
10 Height, race, weight, those kind of things?

11 A I believe that information would have come
12 from a computer check.

13 Q Okay. After the scene?

14 A Correct.

15 Q Had you ever heard of Jason Moore prior to
16 this incident?

17 A No, sir. I had never had any dealings
18 with Mr. Moore.

19 Q Okay. Do you know if the Ferguson Police
20 Department had ever had any dealings with him?

21 A No, sir, I don't.

22 Q So when you say your computer, is that a
23 Regis database at that time?

24 A At that time I'm not sure if we were still
25 with Regis or not. I believe we were still with

1 Regis, but I --

2 Q Assuming you were still with Regis, that's
3 where you would have gotten the information? Or do
4 you think you got it from the family? I'm just --

5 A I -- I don't recall.

6 Q That's fine. Okay. So the next line says
7 taser, and you circled success. What did you mean
8 by that?

9 A That the taser had operated as it was
10 advertised and built to do. The doors deployed, the
11 darts, probes deployed. And according to Officer
12 Kaminski, it worked as advertised.

13 Q Okay. And then they ask on the form,
14 suspect wearing heavy clothes, and you indicated no
15 because he was naked. What is your understanding as
16 to why that's relevant?

17 A It was my understanding during the
18 training that the heavier the coat, clothing, you
19 know, the big poofy coats or the hoodies and the
20 more layers of clothing you have, that you'll get
21 less penetration with the probes.

22 Q Okay. And the probes come in different
23 sizes, to your understanding? There's one that's
24 about .55 of an inch, a little over an inch --

25 A I don't know anything about the sizes of

1 them.

2 Q Did you procure the taser from the scene
3 or do you know what happened, how that --

4 A The taser came back to the station and was
5 logged into evidence.

6 Q Okay. Do you know by who?

7 A I don't recall.

8 Q That's all right. The next one indicates
9 that there was one cartridge used, and the number of
10 cycles applied three. Where did you get that
11 information?

12 A From Officer Kaminski, who told me three.

13 Q A cycle is the same as pulling the
14 trigger, correct?

15 A Yes.

16 Q Okay. So he told you he pulled the
17 trigger three times?

18 A Yes. My understanding is a cycle is a
19 five-second cycle.

20 Q So he told you at the time that he pulled
21 the trigger three times for five seconds each?

22 A No. It was my understanding through
23 training, maybe I just was misinformed, but it was
24 my understanding that the cycles run in five-second
25 cycles. So when he tells me three, I'm thinking

1 that after the first cycle the taser automatically
2 shuts off, you squeeze it again, it runs for five
3 seconds, automatically shuts off.

4 Q I think in the prior report we went
5 through, he told you it was five seconds, five
6 seconds. So he believed that as well, right?

7 A Yes, sir, I'm guessing so.

8 Q Okay. So then you've indicated that the
9 dart probes made contact, that there was no stun gun
10 used, correct?

11 A Correct.

12 Q No stun application. And just for the
13 record, to your understanding, you know, the dart
14 probes were used in this case, one in his chest and
15 one in Mr. Moore's groin that brought him to the
16 ground. Tell the jury what your understanding of
17 using the stun application is.

18 A The stun application is nothing more than
19 a stun gun. It doesn't -- when you use the stun
20 application, the probes or darts are not deployed.
21 And you have to be in close to use it because it's,
22 you know, used by hand. The stun application is
23 used when either you're in a situation where
24 deploying the probes would not be -- you know, in a
25 room full of people, you don't want to just launch

1 these two probes that spread out like buckshot
2 basically as they go across the room. So you would
3 probably go to a stun with it. And it's used to
4 gain compliance.

5 Q Okay. And so the stun application, it's
6 the same gun, you just pull off the cartridge,
7 correct?

8 A Correct.

9 Q To your knowledge, it's feasible to pull
10 off the cartridge after you've used the darts if
11 they come out or something and then use the stun,
12 correct?

13 A Yes, you could do that. I've never done
14 that, but it could be done that way.

15 Q Okay. So to your understanding, your
16 belief, Officer Kaminski had one other use of force
17 alternative that morning, and that was after the
18 first or after the second taser he could have pulled
19 off the cartridge and used the stun to gain pain
20 compliance, correct?

21 A Yes, I suppose so.

22 Q Did you ever discuss with him why he did
23 not do that?

24 A No, sir.

25 Q And the information on the lines regarding

1 15 feet being the approximate target distance at the
2 time the darts were launched, you got that from
3 Mr. -- excuse me, Officer Kaminski?

4 A That is correct.

5 Q Same with the distance between the two
6 probes being 18 inches between the groin and the
7 dart in the chest?

8 A Yes, and Officer Kaminski and -- you know,
9 telling me that the -- showing me, you know,
10 basically.

11 Q Yeah.

12 A Didn't actually measure it though.

13 Q That's an approximation based on where --

14 A Correct.

15 Q I guess you observed the darts while you
16 were there too, right?

17 A No. They had already removed the darts.

18 Q Okay. The officers or the --

19 A The officers had.

20 Q Okay. Do you know when they removed the
21 darts?

22 A No, sir. It was prior to my arrival is
23 all I know.

24 Q So if my understanding is correct, when
25 you arrived he was laying on his stomach in the

1 prone position you described. And when they rolled
2 him over, you didn't see the probes in his chest?

3 A I didn't see the probes in the chest.
4 They may have still been there. I didn't see them.

5 Q Okay. So again, you're just relying on
6 what Officer Kaminski and White told you was the
7 distance between the two probes?

8 A Correct.

9 Q Okay. And the report indicates that the
10 probes penetrated the skin, correct?

11 A That is correct.

12 Q And that they were removed at the scene?

13 A That is correct.

14 Q You just don't know if it was the officers
15 or the EMT that did that?

16 A I don't recollect right at this second.

17 Q Okay. It says, did the application cause
18 injury? And you circled yes.

19 A Yes.

20 Q And did we cover that before, the injury
21 being the abrasions to the face?

22 A Yes.

23 Q Okay. When you filled this out, did you
24 know that Mr. Moore had died?

25 A When this was filled out?

1 Q Yes, sir.

2 A Yes, I filled this out at the station
3 afterwards.

4 Q So the injury was -- included the death?

5 A I did not know -- I don't have the medical
6 knowledge and the medical examiner had not done a
7 post-mortem exam.

8 Q Okay.

9 A So I had no reason to say one way or the
10 other what the cause of death was.

11 Q Okay. So we're clear that the -- the
12 application of taser caused injury, when you circled
13 that, you were solely referring to the fall injuries
14 to his face?

15 A Correct.

16 Q And then it says, if yes, was the subject
17 treated for the injury? And you circled yes again,
18 correct?

19 A Yes.

20 Q Do you know what treatment he received for
21 the abrasions to his face?

22 A No, I don't. I guessed that when he went
23 to the hospital they were going to take care of it
24 there.

25 Q So the second page of your taser report

1 appears to be basically the -- a more brief
2 statement of the facts that are contained in your
3 use of force report, correct?

4 A Yes, sir.

5 Q Let's just run through it real quick.
6 Subject ran at officer swinging arms, comma, taser
7 employed, dash, subject, parentheses, naked, closed
8 parentheses, fell to ground, period. Attempted to
9 rise after initial cycle, period. Second cycle,
10 paren, five seconds, closed paren, applied. Subject
11 layed back down and tried to rise after cycle ended,
12 period. Subject tried getting up and was given
13 third five-second cycle and complied. Correct?

14 A Yes.

15 Q I read that correctly?

16 A Yes, sir.

17 Q Okay. And it says the device responded
18 satisfactorily. You circled yes?

19 A That is correct.

20 Q Further, you describe -- the form says,
21 describe the subject's demeanor after the device was
22 used or displayed, question mark. And you wrote in
23 your report, compliant after third cycle, comma,
24 then unresponsive and not breathing, period.

25 I read that correctly?

1 **A** Yes, sir, you did.

2 **Q** And that's based on your observations as
3 well as Officer White and Kaminski's reports?

4 **A** Yes, sir.

5 **Q** So the authorized control hold was the
6 handcuff behind back after the tasing. Is that
7 correct?

8 **A** Yes.

9 **Q** No videos on any of the cars, patrol cars
10 at the scene to your knowledge?

11 **A** No, sir, we did not have any video
12 equipment, body cameras, anything of that sort at
13 that time.

14 **Q** Did you speak to any of the witnesses
15 whose statements are in the report?

16 **A** I believe --

17 **Q** Non-police officer witnesses, I mean.

18 **A** I believe I spoke with this Fatima Shum or
19 Shurn. I can't make out the last --

20 **Q** I think it's Shum, S-h-u-m, but I'm not
21 sure either. And from my review of her report, she
22 did not actually witness the arrival of Officer
23 Kaminski and the things that followed, correct?

24 **A** No, she never, according to her statement,
25 saw anything.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 122

1 Q Okay. And then there's a -- it looks like
2 an Alan G. Shilling statement on the next page. Had
3 you seen this when you did your report?

4 A Shilling?

5 Q Yes, sir.

6 A No, I don't believe I had.

7 Q Had you taken Fatima Shum's or Fatima
8 Shurn's --

9 A Yes.

10 Q -- report prior to finishing your report?

11 A Yes, I did.

12 Q Did Officer White or Kaminski ever say to
13 you that they heard Mr. Moore say anything about, I
14 am Cain, or Jesus is great, or God is good, any of
15 those things during the incident?

16 A I don't -- I don't recall.

17 MR. DOWD: Okay. Let's go off the record,
18 please.

19 VIDEOGRAPHER: Off the record at 11:55.

20 (Off the record.)

21 VIDEOGRAPHER: Back on the record at
22 11:57.

23 Q (By Mr. Dowd) Lieutenant, as far as the
24 functioning of the dispatch system and the officers
25 and your communications system, you actually have a

1 communications officer, correct?

2 A You mean a supervisor over --

3 Q Yes.

4 A At that time, I believe we did, yes.

5 Q Okay. And do you remember who that might
6 have been?

7 A Possibly -- we've had two.

8 Q Okay.

9 A Or three. It possibly was one of three,
10 Sergeant Mudd, M-u-d-d, Lieutenant Rettke, who would
11 have been a sergeant at that time.

12 Q Okay.

13 A I'm not exactly sure where he was. And
14 the most recent one we've had is Sergeant Wood,
15 but -- W-o-o-d, but he wasn't there during this
16 time.

17 Q Okay. When you radio -- for example, when
18 you first heard Kaminski's -- you heard through the
19 dispatcher Kaminski's on scene with subject,
20 something along those lines?

21 A Yes.

22 Q What would your response have been to
23 dispatch, if any?

24 A I wouldn't have just -- other than we're
25 en route, I wouldn't have given any more

1 information.

2 Q Okay. Would you have said, for example,
3 your location, Marguerite and Airport, en route, or
4 close by en route, I'm there, something like that,
5 if you had been?

6 A No.

7 Q Okay. Just en route?

8 A Just en route.

9 Q That just acknowledges you got the
10 information and you're responding to the scene?

11 A And I'm on my way to the scene.

12 Q How does the dispatcher then know or is
13 able to relay to the officer on scene how close
14 backup is if they don't get any more information
15 than just people are en route?

16 A The -- there is no way.

17 Q Unless they hear the car coming, see the
18 car coming, anything like that?

19 A Correct.

20 Q Do you recall when you arrived at the
21 scene whether any emergency lights were on on the
22 vehicles?

23 A There were emergency lights activated here
24 on the street because, as I said, we were blocking
25 traffic.

1 Q So you're pointing to Exhibit 22A?

2 A That's correct.

3 Q Okay. I'm sorry, you were finished?

4 A Yes, and he was blocking -- there was one
5 there. And forgive me, I don't remember which
6 vehicle it was.

7 Q Okay.

8 A But there was a vehicle there, and then I
9 parked my vehicle in behind there and had my lights
10 activated.

11 Q Okay. What about headlights? Were your
12 headlights on? Was it that --

13 A I don't recall.

14 Q Okay. Was the sun up enough that you
15 didn't need headlights? Can you describe the
16 lighting?

17 A It seems to be that they -- it was bright
18 enough that could you see.

19 Q You don't have a recollection of
20 headlights on Mr. Moore as you pulled in, anything
21 like that?

22 A No.

23 Q Okay. So did you just say that the two
24 squad cars, the patrol cars that were there when you
25 arrived, had their lights on?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 126

1 A I don't --

2 Q Or emergency lights, I mean?

3 A I don't remember if the car on the parking
4 lot had lights or not. I do believe there was a car
5 parked on the street in front.

6 Q Okay.

7 A And I'm not sure whose car that was. But
8 it had its overheads on.

9 Q Okay. Without committing to it, let's
10 assume that's the second car and it's Officer
11 White's car. I just want to know, can you put a
12 line based on where you think the front of his car
13 is -- you're pointing to the picture on 22A,
14 Exhibit 22A. And I think you're pointing at Airport
15 Road. I just want to make sure you're saying it was
16 blocking Airport Road.

17 A Yes. He was pulled to the corner or --

18 Q You can draw a box where you think his car
19 is, if you could, where it was.

20 A That would make it a lot easier.

21 Q Okay.

22 A (Witness complied.)

23 Q And what number --

24 A Number 5.

25 Q Would you put a number 5, please? Yes,

1 sir. And so the front is facing the current --
2 yeah, perfect, thank you for the arrow. Let the
3 record reflect -- would you mind, if you can,
4 drawing a similar vehicle for box number -- for
5 number 4?

6 A (Witness complied.)

7 Q So it sort of looks like they both pulled
8 in sort of facing the same direction.

9 A Yes, sir. They were, I believe, both were
10 facing west.

11 Q Is there any policy or training on when
12 you pull up to a suspect, keep the front of your car
13 towards the suspect so you can hide behind the door?
14 Is there any training like that?

15 A Yes, that's just standard officer safety
16 practice. But in this instance, we always try --
17 and I have no idea what the officer was thinking --

18 Q Understood.

19 A -- when he parked there. I parked behind
20 them. My vehicle was behind this vehicle. Mine was
21 solely to block off that traffic lane so that no one
22 ended up being struck by a vehicle.

23 Q Okay. So you pointed to Exhibit 22A
24 behind a vehicle with the number 5. Would you just
25 go ahead and -- you don't have to put a box for

1 yours. Just put a number 6, please.

2 A (Witness complied.)

3 Q So Officer Kaminski's car, if he pulled
4 in, he pulled with his door perpendicular to where
5 the suspect had been if the suspect was at the curb
6 of Airport Road?

7 MS. SHAFATIE: I just want to stop right
8 there. I think what he had said was that he didn't
9 know whose car that was in the parking lot.

10 THE WITNESS: I don't know --

11 MR. DOWD: Okay, you're right. I'm sorry
12 to assume because I think I know.

13 MS. SHAFATIE: I just wanted to make sure
14 we're not assuming --

15 MR. DOWD: You're right, I'm sorry. Did
16 you get as much of it as you needed?

17 COURT REPORTER: Got it.

18 Q (By Mr. Dowd) If you would assume for me,
19 sir, that the car with number 4 on it is Officer
20 Kaminski's car. And if you would assume that
21 without admitting it's true, his driver door would
22 have been facing the suspect if the suspect was at
23 the curb near where you've put your number 1, right?

24 A Yes, sir.

25 Q And it's preferred that if you can you

1 would put the front of your car there so if you have
2 to you could get behind your door, correct?

3 A That is correct.

4 Q And even theoretically possible to even
5 get back in your car and close the door?

6 A That's correct. But there were other cars
7 pulling in too. That's why I don't know exactly
8 whose car was where.

9 Q Fair enough. Okay. Would you agree that
10 an officer who's on the scene who allows a fellow
11 officer to use excessive force that that first
12 officer could have prevented is also guilty of using
13 excessive force?

14 MS. SHAFATIE: Object to form and
15 foundation. You may answer.

16 A Yes, I would say so.

17 Q (By Mr. Dowd) Okay. And I'm going to give
18 you an example. Maybe you have a better one. But
19 if there's two officers that are in a room with a
20 suspect and the suspect's compliant and
21 non-threatening and someone is just beating him with
22 his baton, the other officer has a duty to tell him
23 to stop, and then stop him if he doesn't, right?

24 MS. SHAFATIE: Object to form and
25 foundation. You may answer.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 130

1 **A** Yes, we have a duty to stop.

2 **Q** (By Mr. Dowd) My understanding of Chief
3 Jackson's testimony was that he tried to have a, I
4 guess through his chain of command going down, a
5 CIT-trained officer on each shift. Do you recall
6 that?

7 **A** No, sir, I don't recall.

8 **Q** Okay. Was there ever an attempt in the
9 2010, 2011 time frame to have a CIT-trained officer
10 on each patrol?

11 **A** Yes. We were trying to get everyone in
12 the department moving that direction with the CIT.

13 **Q** Okay.

14 **A** That was a goal that we wanted, but at
15 that time I don't remember --

16 **Q** -- one way or another whether you had
17 enough?

18 **A** Correct.

19 **Q** Okay. The goal would have been to have
20 one CIT-trained officer on each patrol so -- one of
21 the purposes of that would be so that they could
22 hopefully help handle a citizen who was in crisis or
23 a person was having mental health issues, right?

24 **A** Yes, sir.

25 **Q** And it would be preferred to have the

1 officers trained with that tool deal with that
2 person rather than somebody who wasn't trained how
3 to deal with them, correct?

4 A That's correct.

5 Q I assume that in your career you've met
6 officers that come in all -- of all types, large,
7 small, heavy, fast, smart, maybe more practical or
8 less intelligent, right?

9 A Yes.

10 MS. SHAFATIE: Object to form. You can
11 answer.

12 THE WITNESS: Sorry.

13 Q (By Mr. Dowd) I mean, it's -- that's
14 everybody. I mean, probably in my own office that's
15 true. So -- and they come with different levels of
16 experience as well, correct?

17 A Yes.

18 Q So you've got somebody who's fresh out of
19 the academy versus somebody like yourself.
20 Experience is going to give them different insights
21 and ability to handle situations, correct?

22 A Yes.

23 Q And because those things are true, it's
24 important to train officers as much as possible,
25 correct?

1 MS. SHAFAT: Object to form. You may
2 answer.

3 Q (By Mr. Dowd) Do you understand the
4 question?

5 A Yes.

6 Q Because you don't want to assume everybody
7 that comes out of the academy is the same robotic
8 officer, right?

9 MS. SHAFAT: Form.

10 Q (By Mr. Dowd) One is going to be smarter
11 than the other, one's going to be bigger, you're
12 going to have lady officers, you're going to have
13 large male officers. Each person has to be trained
14 on the policies and procedures of the department so
15 that they are trained and learn them uniformly.

16 MS. SHAFAT: Form.

17 Q (By Mr. Dowd) Is that a fair statement?

18 MS. SHAFAT: Form. You may answer. I'm
19 sorry.

20 A Yes.

21 Q (By Mr. Dowd) And the importance of that
22 is amplified by the fact that you and your officers
23 are involved in fluid situations that are changing
24 and you have to make decisions quickly, correct?

25 MS. SHAFAT: Form. You may answer.

1 **A** Yes, sir.

2 **Q** (By Mr. Dowd) You don't have to -- you
3 don't have time to look at your training manual,
4 your use of force manual or the policies and
5 procedures, correct?

6 MS. SHAFATIE: Form. You may answer.

7 **A** That's correct.

8 MR. DOWD: Can I ask what's wrong with the
9 form and foundation of that question?

10 MS. SHAFATIE: Compound, argumentative,
11 vague.

12 MR. DOWD: He's a defendant in this
13 lawsuit. That's not -- argumentative is not a valid
14 objection. And I don't think it was compound, but
15 the record will speak for itself.

16 **Q** (By Mr. Dowd) Did you understand my last
17 question, sir?

18 **A** I just forgot what you said listening
19 to --

20 **Q** Listening to the debate.

21 MR. DOWD: Okay. Would you mind reading
22 back the last question that was objected to?

23 (The requested portion of the
24 record read by the reporter.)

25 MS. SHAFATIE: Same objection. You can

1 answer.

2 **A** Oh, correct.

3 **Q** (By Mr. Dowd) And that also raises the
4 importance of repeatedly training and also testing
5 on the training to re-enforce? For example, we
6 talked earlier in the deposition about the firearms
7 training. Obviously if an officer is in a situation
8 where he's got to use his firearm, that's heightened
9 everything, his reactions, his adrenaline,
10 everything. And so the repetitive training is so
11 that he can react properly under that stressful
12 situation, correct?

13 MS. SHAFATIE: Object to form and
14 foundation. You may answer.

15 **A** Yes.

16 **Q** (By Mr. Dowd) You agree with that
17 statement?

18 **A** I do agree with that statement.

19 **Q** Okay. So you can -- you can have good
20 policies, but they're not worth much in the police
21 business, in the profession of the police, unless
22 they are communicated to the officers, the officers
23 are trained on them, and then the training's
24 reinforced, correct?

25 MS. SHAFATIE: Form and foundation. You

1 may answer.

2 A I believe --

3 Q (By Mr. Dowd) Do you agree with that
4 statement?

5 A I believe that's with any profession.

6 Q And this training on the policies and
7 procedures, whether it's firearms or use of force or
8 helping people who have a lost child or an elderly
9 person in distress, all of those things are for the
10 safety of either or both people who are not officers
11 and the officers?

12 MS. SHAFATIE: Form and foundation. You
13 may answer.

14 A Yes, that's correct.

15 Q (By Mr. Dowd) So these policies and
16 procedures of the department are to promote the
17 public safety and the safety of the police officers?

18 A Yes.

19 Q So to put it another way, when police
20 departments train the officers not to use excessive
21 force, this is for the safety of the public?

22 MS. SHAFATIE: Form and foundation. You
23 may answer.

24 A Yes, it is.

25 Q (By Mr. Dowd) And excessive force is

1 designed to protect the public from abuse by police
2 officers?

3 MS. SHAFATIE: Form and foundation. You
4 may answer.

5 A I'm sorry, could you --

6 Q (By Mr. Dowd) Sure. Excessive force
7 training or use of force training is designed, at
8 least in part, to protect the public from abuse by
9 police officers?

10 MS. SHAFATIE: Same objection. You may
11 answer.

12 A Yes, it is.

13 MR. DOWD: Your form and foundation
14 objections can be for the record until we take our
15 next break, okay? You don't have to make them.

16 MS. SHAFATIE: So we'll just stipulate --

17 MR. DOWD: Just like --

18 MS. SHAFATIE: -- and you agree with that
19 as well that --

20 MR. DOWD: Until the next break, just the
21 same record that Robert made in the previous
22 deposition. I thought it was pretty thorough.

23 MS. SHAFATIE: Just until the next break?

24 MR. DOWD: Exactly.

25 MS. SHAFATIE: Okay. That's fine.

1 Q (By Mr. Dowd) So -- and police departments
2 also have a duty as a lieutenant, sergeants,
3 captains, chief, to supervise the patrol officers
4 who are engaging with the public, correct?

5 A That is correct.

6 Q And if I understand Chief Jackson's
7 testimony, that was part of his ability to monitor
8 and review compliance with the policies and
9 procedures was the superior officers, the
10 supervisors and the fellow officers, correct?

11 A That is correct.

12 Q So that supervision, when a police
13 department supervises officers not to use excessive
14 force, this is also for the safety of the public?

15 A Yes, sir.

16 Q And excessive force supervision of the
17 department's officers is designed to protect the
18 public from abuse by police officers?

19 A Yes, sir.

20 Q You would agree that this training and
21 supervision is designed to protect all of us from
22 serious injury and death?

23 A Yes.

24 Q You agree that departments should train
25 officers how to deal with people who are having

1 personal crisis?

2 A Yes, sir.

3 Q You agree that departments should
4 supervise its officers on how they deal with people
5 in personal crisis?

6 A Yes, sir, I do.

7 Q You further agree that training and
8 supervision on how to safely deal with people in
9 personal crisis is to protect the public from
10 serious injury and death?

11 A Yes.

12 Q Do you believe it is particularly
13 important for police officers not to use excessive
14 force when dealing with people who are having a
15 personal crisis or mental health issues?

16 A Yes, sir, I do.

17 Q Okay. Why is that?

18 A That person at that moment in time has --
19 well, let me rephrase that. They can actually be
20 knowing what they are doing, if that makes sense, or
21 they could totally have no clue of what they are
22 doing or the consequences of their actions.

23 Q You say they. You mean the members of the
24 public that might have a mental issues?

25 A Correct, the people that you asked me

1 about. So the officer needs to be trained, I feel,
2 instead of -- you know, to handle that better rather
3 than just jump out like some --

4 Q Cowboy and --

5 A Yeah, that's a good word, I guess. But
6 some robot or whatever and, you know, just
7 automatically cart people off to jail or, you
8 know -- I mean, if you have to fight, you have to
9 fight. But if you can talk a person down or talk
10 them out of it, then that's what they need to be
11 doing.

12 Q That's consistent with using the least
13 amount of force necessary?

14 A That is correct.

15 MR. DOWD: Okay. Let's go off the record.

16 VIDEOGRAPHER: Off the record at 12:15.

17 (Back on the written record, but off the
18 video record.)

19 MS. SHAFAT: Before going on the record,
20 Mr. Dowd, counsel for Plaintiff, handed the witness
21 and also me Plaintiff's Exhibit 23. I asked him if
22 he had previously produced it to us, meaning us, the
23 defendants. He said that he thought perhaps he had
24 received it from Defendants. I examined Exhibit 23
25 very briefly, noted that there were no Bates

1 labeling on Exhibit 23. And had it been produced by
2 Defendants, it would have had some sort of Bates
3 labeling.

4 I then asked whether this had been
5 previously produced to Defendants by Plaintiffs.
6 Mr. Dowd responded that it had not been previously
7 produced. He has not told me what it is, where he
8 received it, when he received it. And so I'm going
9 to ask him now --

10 MR. DOWD: I'll tell you, as I told you
11 off the record, that this is a document that was in
12 my file from my work product. We have lots of
13 lawyers working on this case gathering information.
14 It was in my file. I saw Mr. Ballard's name --
15 Lieutenant Ballard's name on it. I didn't know what
16 it was. So I wanted to bring it today and ask him
17 if he knew what it was and why his name is on it.

18 MS. SHAFATIE: I just want to --

19 MR. DOWD: I discovered it in my file last
20 night just scrolling through and clicking on things
21 that had Mr. Ballard's name on it.

22 MS. SHAFATIE: And I just want to clarify,
23 when you say you found it --

24 MR. DOWD: Further, I don't have to
25 disclose documents used solely for purposes of

1 cross-examination. So for the record, I didn't have
2 to produce this, if that's what it turns out to be.
3 So do you need to make any more record before we ask
4 three questions about this?

5 MS. SHAFATIE: The only other thing I want
6 to state into the record is that because I've never
7 seen it before and I don't know what it is and I've
8 only had five seconds to examine it, I don't know if
9 it may have been responsive to our previous
10 discovery request. And so that is the only reason
11 why I inquire as to when you received it and what it
12 is, so that I may know whether it should have been
13 provided to us previously.

14 VIDEOGRAPHER: Back on the video record at
15 12:20.

16 Q (By Mr. Dowd) Lieutenant, I've given you
17 what's previously been marked Plaintiff's Exhibit
18 23. Do you see that?

19 A Yes, sir, I do.

20 Q Have you had a moment to page through it?

21 A Yes, sir, I have.

22 Q Do you know what this document is? It's
23 titled detailed report.

24 A I have no idea what this is, sir.

25 Q Is -- I'm going to ask you without reading

1 into the record, for privacy purposes, is that email
2 address that appears on there your personal email
3 address?

4 A No, sir, it is not.

5 Q Is that a department email address?

6 A That's my son's email.

7 Q Okay. Is your son a certified instructor
8 or taser user? He's an -- is he an officer?

9 A Yes, sir, he's a detective with the
10 Ferguson Police Department.

11 Q Okay. So that's his -- so this would be
12 relative to him?

13 A Yes, sir. 552 is his badge number.

14 Q You looked -- not that you're old, but you
15 looked a little old to have Billy Ballard as your
16 email address. Okay, so you don't have any
17 knowledge about the document. That's all the
18 questions I have.

19 A No, sir, I --

20 Q Thank you.

21 A -- don't have any.

22 Q I'd like to give you Exhibit 24 and ask
23 you to take a look at that. I'll give one to your
24 counsel as well. Can I give you the other one?
25 Officer, can I have that one back? Or Lieutenant,

1 I'm sorry. This one's got my highlights. I'm going
2 to try to -- you can see on the one I just gave you
3 I've got two areas highlighted. That's sort of what
4 I'm going to focus on.

5 A Okay.

6 Q I'll move through a couple of these so I
7 understand how these reports are made. Does that
8 appear to be a non-lethal force report from the
9 Ferguson Police Department?

10 A Yes, sir, this is the one we were using
11 when I was hired back in '89, I believe.

12 Q Okay. And the date of this incident was
13 February 25th, 2008?

14 A Yes, sir.

15 Q And if tasers were obtained by Ferguson in
16 July of 2010, this would have been before they had
17 tasers as a use of force tool, correct?

18 A Yes, sir.

19 Q If you would look on section 22, the
20 supplemental narrative, the last part of it reads, 8
21 to 12 females started fighting, period. They were
22 told several times, parentheses, three, closed
23 parentheses, to stop fighting and disburse. They
24 continued to fight. I warned them I was going to
25 use OC spray. They continued, period. OC spray was

1 sprayed in their direction, period. They took off
2 running, period.

3 Did I read that correctly?

4 A Yes, sir.

5 Q And that's -- there's a reporting officer,
6 it looks look Horton?

7 A That is correct, yes, sir.

8 Q Okay. So there's no officer injury in
9 this situation?

10 A I was not there. I don't know.

11 Q Okay. Or at least pursuant to this
12 report. I think there's a --

13 MS. SHAFATIE: I'm just going to object.

14 Q (By Mr. Dowd) On the first page of
15 Exhibit 24, is there a box for, I notice on the
16 later forms there is, whether an officer was
17 injured?

18 MS. SHAFATIE: Are you asking him a
19 question?

20 MR. DOWD: I'm sorry?

21 MS. SHAFATIE: Are you asking him a
22 question?

23 MR. DOWD: Yes. I'm asking him if
24 there -- if this form indicates whether there was an
25 officer injured.

1 **A** I don't see any place on there for officer
2 injury.

3 **Q** (By Mr. Dowd) Okay. So it doesn't say
4 either way, correct?

5 **A** Correct.

6 **Q** But there was no citizen that was injured
7 and no taser was used. Would you agree with that?

8 **A** According to the report, yes, sir.

9 **Q** I'll give you Exhibit 25. Does that
10 appear to be a non-lethal force report dated
11 June 15th, 2009?

12 **A** Yes, sir, it does.

13 **Q** Does it indicate one way or the other
14 whether an officer was injured? I'll point out at
15 section 22 it says, once -- the subject began to
16 resist arrest. You see that? And then it goes down
17 to, once in the patrol car subject became irate and
18 began yelling, period. He kicked my seat, comma,
19 causing me to jerk forward and strain my neck,
20 period. I ordered him to stop kicking, period. He
21 continued to kick, comma, striking the car window
22 and shattering it, period. I then had to use a shot
23 of OC spray to help him get under control.

24 Did I read that correctly?

25 **A** Yes, sir.

1 Q Okay. So that officer did not have to use
2 a taser, correct?

3 A No, sir.

4 Q And there a citizen was not seriously
5 injured or killed?

6 A No, sir.

7 Q And the injury to the officer happened
8 before the use of force, correct, not after?

9 A According to the report, that's correct.

10 Q Let me give you Exhibit 26. Is that a
11 non-lethal force report for Ferguson dated
12 October 30th? And if you look on the back page,
13 it's got a complete date of 10/30/2009. Do you see
14 that?

15 A Yes, sir, I do.

16 Q Okay. And this use of force report, it
17 says that the male subject began fighting with the
18 officers to avoid being arrested, period. One
19 subject was taken to the ground. He continued to
20 resist, refusing to put his hands behind -- excuse
21 me, his hands behind his back. Subject was told
22 several times to stop resisting, period. Subject
23 was sprayed with OC and placed under arrest without
24 further incident, period.

25 Did I read that correctly?

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 147

1 **A** Yes, sir.

2 **Q** Okay. So the officer was able to gain
3 compliance without the use of a taser, correct?

4 **A** Yes, sir, it appears so.

5 **Q** Doesn't appear from this report the
6 officer was injured?

7 **A** No.

8 **Q** And it doesn't appear a citizen was
9 seriously injured or killed either, correct?

10 **A** That is correct.

11 **Q** Let me give you Exhibit 26. I'm sorry,
12 this will be Exhibit 27. Does that appear to be a
13 use of force report from Ferguson Police dated
14 August 23rd, 2010?

15 **A** Yes, it does.

16 **Q** Okay. It indicates that pepper mace was
17 used?

18 **A** Yes, sir, it does.

19 **Q** And that was at a domestic assault third?

20 **A** Correct.

21 **Q** You signed this as the commander and
22 supervisor?

23 **A** I did, sir.

24 **Q** If you look on the second page, it looks
25 like the suspect was not injured and was

1 decontaminated at the station after he was maced.

2 Is that correct?

3 A That's correct.

4 Q Does it indicate the police officer was
5 hurt?

6 A No, sir, it does not.

7 Q Okay. So no officer injury, no citizen
8 injury and no taser required, correct?

9 A That's correct.

10 MS. SHAFATIE: Can we go off the record for
11 a second?

12 MR. DOWD: Yes, ma'am.

13 VIDEOGRAPHER: Off the record at 12:28.

14 (Back on the written record, but off the
15 video record.)

16 MR. DOWD: We had a discussion off the
17 record how many of these we're going to go through,
18 and I said I'm going to go through the date of the
19 incident. And I was asking if she would stipulate
20 on behalf of her clients that these are business
21 records as recognized by the federal rules of
22 evidence so I don't have to go through the
23 foundation with each one or all of them.

24 MS. SHAFATIE: I will stipulate to the
25 admissibility of the document itself. Not to any of

1 its contents, if they were to be used for hearsay or
2 anything like that.

3 MR. DOWD: Okay. So the authentication is
4 complete --

5 MS. SHAFAT: Correct.

6 MR. DOWD: -- but you reserve hearsay
7 objections.

8 MS. SHAFAT: Yes.

9 MR. DOWD: Okay.

10 VIDEOGRAPHER: Back on the record at
11 12:30.

12 Q (By Mr. Dowd) I've given you Exhibit 28,
13 Lieutenant, which is a use of force report dated
14 August 26, 2010.

15 A Yes, sir, you did.

16 Q And these reports, the ones I've shown you
17 previously, are generally -- they're kept in the
18 ordinary course of the department's business,
19 correct?

20 A That is correct.

21 Q And they're made at or near the time of
22 the information contained in them?

23 A Yes, sir.

24 Q And they're used for the professional and
25 business purposes of the department?

1 **A** That is correct.

2 **Q** All right. They're not created solely for
3 purposes of litigation, are they?

4 **A** No, sir.

5 **Q** And do you and the other officers in the
6 command at the department rely on the information
7 that's contained in these reports? I mean, do you
8 look at them and assume that they're accurate and
9 true?

10 **A** Yes, sir.

11 **Q** And that they're made by persons with
12 knowledge of the facts contained therein?

13 **A** That is correct.

14 **Q** So on 28, Exhibit 28, this was a physical
15 force situation where the person was resisting
16 arrest, correct?

17 **A** That is correct.

18 **Q** And so if you look on the additional
19 comments, the third sentence down, it begins, he
20 refused to give his hands to the officer and was
21 struck with an open palm strike, parentheses, heel
22 of the hand, closed parentheses, once in the back,
23 between the shoulder blades, period. The subject
24 then complied and was handcuffed without further
25 incident, period.

1 I read that correctly?

2 A That is correct.

3 Q And then I'd like to go down to where it
4 begins, Officer Pillarick acted properly and within
5 the departmental policy guidelines. The arrestee
6 shows no signs of injury.

7 I read that correctly?

8 A Yes, sir.

9 Q Okay. There were paramedics at the scene,
10 but they did not see any obvious injuries. Do you
11 see that?

12 A Yes.

13 Q And would you agree that there is no
14 mention of serious injury to an officer in this
15 report?

16 A Yes, sir.

17 Q And there was no person, citizen, that was
18 injured or killed?

19 MS. SHAFATIE: I'm going to object.

20 MR. DOWD: I'll rephrase.

21 MS. SHAFATIE: Just look -- if you look at
22 the first page, just --

23 MR. DOWD: Okay.

24 MS. SHAFATIE: I think it mischaracterizes.

25 MR. DOWD: Okay. So I'll withdraw the

1 question.

2 Q (By Mr. Dowd) Would you agree that this
3 report shows that the citizen, the person who was
4 taken into custody by the officer, showed no signs
5 of serious injury and was not killed?

6 A Yes, sir, according to the report.

7 Q There was no taser application required at
8 all?

9 A No, sir.

10 Q And at least in the narrative it doesn't
11 describe any serious injury to an officer, correct?

12 A That is correct.

13 Q Would an officer who tackles a suspect and
14 has to take him, would they be presumed to have been
15 injured?

16 MS. SHAFATIE: Object to form. You can
17 answer?

18 A It depends on where you tackle him.

19 Q (By Mr. Dowd) If you tackle him on the
20 concrete?

21 A On the concrete, I would imagine that you
22 would have some sort of abrasion or injury or --
23 unless, of course, you fall on the person you're
24 tackling and they break your fall.

25 Q Okay. So the officer injured could mean

1 something like that, that the officer scraped his
2 elbow or his knee when he was tackling the
3 gentleman?

4 A Yes.

5 Q I'll give you Exhibit 29. Does that also
6 appear to be a use of force report from the Ferguson
7 Police Department? And this one is dated
8 January 15th, 2011?

9 A Yes, it is.

10 Q And here it's resisting arrest and
11 physical force was used by the officer, correct?

12 A That is correct.

13 Q And there's no indication on the front
14 page that there was an officer injured?

15 A No, sir.

16 Q If you look on the second page under the
17 comments, it appears that the person appeared to be
18 intoxicated and refused to do what the officer told
19 him to do and grabbed the officer's arm and pushed
20 him, period. Officer Mullen then took him to the
21 ground and the subject's nose started to bleed. An
22 LSU was requested and responded, period. The
23 subject was treated and made no further complaints
24 and then complied with the officer's request,
25 period.

1 Did I read that handwriting correctly to
2 your belief?

3 A Except for the LSU should be LSV, V as in
4 vehicle.

5 Q Okay. And what is LSV, please?

6 A Life support vehicle. It's an ambulance.

7 Q Okay. So this report indicates that no
8 officer was injured?

9 A Correct.

10 Q That no person, namely the citizen or
11 suspect, was not seriously injured or killed and no
12 taser was used, correct?

13 A Correct.

14 Q I'll give you what I'm marking Exhibit 30.
15 Is that a use of force report dated September 12th,
16 2011?

17 A Yes, sir, it is.

18 Q And this, again, is after there were
19 tasers for use at the Ferguson Police Department?

20 A To the best of my knowledge, yes, sir.

21 Q And this is just a -- it's the day
22 after -- excuse me, a couple days before the
23 September 17th, 2011 Moore incident, correct?

24 A Yes, sir.

25 Q Okay. And this, again, is a resisting

1 arrest with physical force used by the officer?

2 A Yes, sir, it is.

3 Q And if you look at the middle of the
4 additional comments, you're welcome to read the
5 entire comments if you'd like, but I'm going to read
6 into the record the middle part that states, verbal
7 commands were given to Edwards but he continued on
8 toward Beard. Using an arm bar technique against
9 Edwards he was forced to the ground but resisted
10 handcuffing. Keeping in a push-up stance to resist
11 further, Edwards was finally pushed to the ground
12 fully for handcuffing, period.

13 Did I read that portion correctly?

14 A That is correct.

15 Q It says during the process -- it indicates
16 Edwards received an abrasion to his forehead,
17 correct?

18 A That is correct.

19 Q Doesn't indicate there was an officer
20 injury in this situation?

21 A No, sir, it does not.

22 Q Does not indicate that the suspect
23 received a serious injury or death?

24 A No, sir.

25 Q And there was no need for a taser,

1 correct?

2 **A** That is correct, sir.

3 **Q** In all the discussions you had with White
4 and Officer Kaminski regarding their observations of
5 Mr. Moore on the day that Mr. Moore died, did you
6 ever hear either of those officers use the phrase
7 that he was in the push-up stance to resist or was
8 in a push-up stance at all?

9 **A** It sounds familiar, sir, but I just read
10 it in the narrative there, so I don't want to -- I
11 don't recall.

12 **Q** You don't have a specific recollection of
13 them using that phrase?

14 **A** I don't recall.

15 **Q** And you don't -- you never saw in any of
16 the reports you reviewed prior to your testimony
17 today, did you?

18 **A** I don't believe so.

19 **Q** Let me give you what's been marked
20 Exhibit 31 and ask you to confirm that this is a use
21 of force report dated September 21st, 2011. It
22 indicates this was resisting arrest where physical
23 force was used by the officer including mace. Is
24 that correct?

25 **A** Yes, sir, it is.

1 **Q** This officer was trying to apprehend
2 someone who continued to walk away from the officer,
3 did not comply with the officer. Officer -- the
4 officer used an arm bar to pin the suspect against a
5 patrol vehicle and attempted to handcuff her, but
6 the suspect continued to resist and pull away,
7 actually kicked the officer in the chest and spit on
8 the officer, kicked both doors and windows of the
9 vehicle, kicked again the officer in the chest. The
10 officer used the OC spray, or pepper spray, to gain
11 control of the suspect. The suspect had been warned
12 to stop being physically violent prior to the OC
13 spray.

14 Does that all appear consistent with the
15 report you have, sir?

16 **A** Yes, sir, it is.

17 **Q** It appears the suspect was given dry
18 towels to clean off the OC spray and did not claim
19 any injury, correct?

20 **A** That is correct.

21 **Q** And neither officer was injured. It
22 states that as well?

23 **A** Yes, sir.

24 **Q** So no officer injury, no serious injury to
25 the citizen, and no need for a taser in that

1 instance, correct?

2 **A** That is correct.

3 **Q** This is September 21st, 2011 when the
4 department had tasers available, certain officers
5 had tasers?

6 **A** Yes, sir. Not everyone has a taser.

7 **Q** I understand. But they were able to get
8 the situation under control without an injury,
9 without a taser?

10 **A** Yes, sir, according to the report.

11 **Q** According to the report.

12 MR. DOWD: Okay. Let's go off the record,
13 please.

14 VIDEOGRAPHER: Off the record at 12:40.
15 (Off the record.)

16 VIDEOGRAPHER: Back on the record at
17 12:44.

18 **Q** (By Mr. Dowd) Lieutenant, we talked
19 earlier in the deposition about your experiences
20 with and a foreseeability of different people that
21 your officers and when you were a street officer
22 encountered members of the public who were either in
23 public crisis or having mental health issues. I
24 just wanted to ask, you'd agree that -- I had a few
25 more specific examples and ask you if these fall

1 into the types of people we were talking about
2 earlier. People with certain mental disabilities?

3 A Yes, sir.

4 Q Diabetics having diabetic shock?

5 A Yes.

6 Q Elderly people with dementia or
7 Alzheimer's?

8 A That's correct.

9 Q People having agitated or excited
10 delirium?

11 A Yes.

12 Q Okay. Do you under -- is there a
13 distinction in your mind between agitated delirium
14 and excited delirium?

15 A No, sir.

16 Q Okay. What's your understanding of that
17 state of mind?

18 A I'm not exactly sure what that is, to be
19 honest with you.

20 Q Okay.

21 A I've just recently heard the term over the
22 last couple years and read up on it. But the way I
23 see it -- and whether it's agitated or -- what was
24 the other?

25 Q Excited.

1 **A** Excited, is that this person is not in
2 their right, you know, frame of mind. They may be
3 hallucinating, they may be hearing voices, and it
4 could be for a number of different reasons, and they
5 act on those impulses.

6 **Q** Uh-huh.

7 **A** So, you know, it elevates the activity of
8 the person, their heart rate, their breathing, you
9 know, whereas an officer may originally look at that
10 person and think that they are just mad or angry or
11 whatever. You know, they're not going to maybe
12 realize it's an underlying medical condition.

13 **Q** Okay. And are those people -- because of
14 that underlying medical condition, are they at
15 greater risk for an in-custody death or a --

16 **A** Yes, sir, they are.

17 **Q** And why is that?

18 **A** From what I've read, it's due to the
19 elevated heart rate, the respirations and that sort
20 of thing.

21 **Q** Okay. And is it your understanding that a
22 taser application accelerates the heart rate and
23 does -- puts more stress on a person's body?

24 MS. SHAFATIE: Object to foundation.

25 **Q** (By Mr. Dowd) Is that your understanding?

1 You can answer.

2 MS. SHAFAT: I'm sorry, you can answer.

3 I'm so sorry.

4 THE WITNESS: I just hear objection and --

5 MS. SHAFAT: You're good.

6 A Yes, it does elevate the heart rate as to
7 what we were told during training.

8 Q (By Mr. Dowd) Was there any training by
9 the Ferguson Police Department prior to September of
10 2011 regarding helping an officer identify people
11 that are in excited delirium?

12 A Other than just going, sending whichever
13 officers are available to go to the CIT training,
14 no, there wasn't.

15 Q So CIT training would be applicable use
16 of -- applicable tool to use on a person in excited
17 delirium if possible?

18 A Having not --

19 MS. SHAFAT: I'll object to foundation.
20 You can answer.

21 Q (By Mr. Dowd) You have not had CIT
22 training?

23 A Having not been CIT certified, I don't
24 know.

25 Q But you have a general idea of what the

1 purpose of CIT is. You agree with that?

2 A Yes, sir.

3 Q Okay. And you want your officers to get
4 trained on it, correct?

5 A Yes, sir, I do.

6 Q And a person in excited delirium, that
7 officer would have, if they're trained, they would
8 have that as a tool for managing that person?

9 A Yes, sir, they would.

10 Q The other tool they would have available
11 would be the deescalation techniques that they -- if
12 they had been trained on deescalation techniques,
13 they would have that as a tool to deal with a person
14 who's in excited or agitated delirium?

15 A Yes, sir, that would be another tool.

16 Q Those would be early tools in the use of
17 force continuum?

18 MS. SHAFATIE: Object to form.

19 Q (By Mr. Dowd) And obviously -- let me
20 clarify. I'll rephrase. Deescalation techniques
21 and CIT training techniques are early in the use of
22 force continuum? And what I mean by that is there's
23 command presence, there's soft voice, there's hands
24 on softly, there's hands on firmly, and somewhere in
25 that early progression the CIT and deescalation

1 tools would be used in that phase of the selection
2 process?

3 MS. SHAFAT: Form. You can answer.

4 A Yes, you would.

5 Q (By Mr. Dowd) Once you get to firm hands
6 on or body holds, arm bars, thumb locks, things like
7 that, you're past the CIT and deescalation training,
8 correct?

9 A Yes, sir. Once -- once you get into that,
10 you're no longer talking nice.

11 Q And that's what I meant by in the
12 continuum. You would use it before those?

13 A Yes, you would use it before any
14 physical --

15 Q And in the hopes that you wouldn't have to
16 escalate the force?

17 A That's the object of it, yes, sir.

18 MR. DOWD: Okay. Let's go off the record.

19 VIDEOGRAPHER: Off the record at 12:50.

20 (Off the record.)

21 VIDEOGRAPHER: Back on the record at
22 12:51.

23 MR. DOWD: Lieutenant, thank you for your
24 time today. I don't have any further questions. I
25 would reserve the right to inquire further if

1 documents that are produced that should have been
2 previously produced or are later discovered to
3 inquire further about those subjects. But again,
4 thank you for your time.

5 THE WITNESS: Thank you, sir.

6 EXAMINATION

7 QUESTIONS BY MS. SHAFAT:

8 Q I just have a couple questions for you to
9 follow up on some of the topics that Mr. Dowd spoke
10 to you about. One of the things that he talked to
11 you about was roll call and also staff meeting. And
12 you said that you did not remember the topic of
13 Mr. Moore being brought up during a staff meeting.
14 Do you recall the topic of Mr. Moore ever being
15 brought up during any roll call?

16 A Other than just maybe someone saying that
17 we had had a death with a taser. But I don't recall
18 anything else.

19 Q Okay. So do you know if the topic of
20 Mr. Moore would have been brought up in roll call,
21 say, the evening of Mr. Moore's death?

22 A I don't recall that.

23 Q Okay. Then you talked about -- Mr. Dowd
24 asked you about whether you were aware of a desire
25 of Tom Jackson's to have a CIT-trained officer on

1 every patrol shift. Do you remember him talking to
2 you about that?

3 A Yes, I do.

4 Q And you said, and correct me if I'm wrong,
5 you said you didn't -- you remember that it is an
6 initiative for all officers to be CIT-trained, but
7 you didn't remember specifically that there should
8 be a CIT-trained officer on each patrol. Do you
9 remember giving that answer?

10 A Yes.

11 Q Were you, as lieutenant at that time, in
12 charge of scheduling officers onto each shift?

13 A Yes.

14 Q Okay. And were -- was there anyone who
15 was in charge of scheduling over you?

16 A Captain Henke would have been.

17 Q And what would Captain Henke's
18 responsibility have been with regard to scheduling
19 officers?

20 A To work?

21 Q Yes.

22 A Captain Henke made the schedule for the
23 year with each officer, days off, rotations, that
24 sort of thing. Also, he kept the running totals on,
25 you know, who was on vacation or that sort of thing.

1 **Q** Okay. So would he have known whether
2 there was an officer that was CIT-trained on each
3 schedule or shift?

4 **A** I'm -- I can't answer that because we
5 didn't specifically -- or I didn't. I can't speak
6 for the other supervisors. I didn't specifically
7 send up anything saying that, you know, so-and-so is
8 CIT-trained or a bomb technician or anything.

9 **Q** Sure.

10 **A** K-9, everybody pretty much knows.

11 **Q** Then Mr. Dowd went over several exhibits
12 with you that were use of force reports that were
13 not authored by you except for maybe one. Do you
14 remember looking at those exhibits?

15 **A** Yes, I do.

16 **Q** I think they were Exhibits 24 through 31,
17 for the record. And do you remember Mr. Dowd going
18 over what uses of force were used in each one of
19 those reports?

20 **A** Yes, I do.

21 **Q** And specifically, Mr. Dowd talked to you
22 about certain force reports that showed that OC or
23 pepper spray or mace was used. Do you remember
24 looking at those reports?

25 **A** Yes, sir, I do.

1 Q And then Mr. Dowd --

2 A Or yes, ma'am.

3 Q Sure. And then do you remember Mr. Dowd
4 also going over some of the reports where empty hand
5 techniques or other sort of physical force was used?
6 Do you remember those?

7 A Yes.

8 Q Okay. Do you know whether the officers in
9 those situations would have had access to a taser on
10 their shift?

11 A No, I would not.

12 Q Are all -- are -- do all officers have
13 access to a taser when they're on their shift?

14 A No.

15 Q And why is that?

16 A I believe when we first got the tasers
17 there was barely enough to outfit a shift, a squad
18 that was working. Then when tasers -- you know, for
19 whatever reason they would -- you know, somebody
20 drops it on the floor and it breaks or we don't want
21 to use it after you drop it, to this day we still do
22 not have a taser per officer.

23 Q So it's fair to say there aren't enough
24 tasers for each officer going out on each shift to
25 carry one with them?

1 **A** That's correct.

2 **Q** Okay. And then does each officer, as far
3 as you know, also always carry mace with them?

4 **A** No.

5 **Q** Okay. Why is that?

6 **A** It was found that -- well, as in Officer
7 Kaminski's instance, he's deathly allergic to the
8 stuff. But a lot of the officers, they don't
9 tolerate OC spray. So they would go to the taser as
10 their alternate versus the OC.

11 **Q** Okay. And you brought up Officer
12 Kaminski. And Mr. Dowd also talked to you about
13 Officer Kaminski's aversion to mace or OC spray.
14 Would you want Officer Kaminski, as his lieutenant,
15 to be carrying mace and using mace because of his
16 reaction to it?

17 MR. DOWD: Objection, vague as to time and
18 scope. Go ahead, sir, you can answer.

19 **A** No, I wouldn't want him to.

20 **Q** (By Ms. Shafaie) Why would you not want
21 Officer Kaminski to ever carry mace with him?

22 MR. DOWD: Same objections.

23 **A** It would be because of the way it affects
24 him. But also, it's a safety issue.

25 **Q** (By Ms. Shafaie) Talk to me about safety

1 issue.

2 **A** If an officer on the scene cannot defend
3 himself or assist another officer, then he becomes a
4 liability, he or she, because now you've introduced
5 another gun onto the scene where maybe there wasn't
6 before. So now you're dealing with whatever problem
7 you're dealing with or the subject you're dealing
8 with, and out of one side of your head you're
9 looking concerned about where your officer's at so
10 that you can, you know, take care of him if you need
11 to. So it becomes a problem. I would rather have
12 two officers I can depend on than one little spray
13 of pepper spray which may or may not affect
14 somebody.

15 **Q** Okay. Now, Mr. Dowd also asked you about
16 the use of force report that you completed regarding
17 this incident involving Mr. Moore. Do you remember
18 talking about that use of force report?

19 **A** Yes.

20 **Q** And he asked you about whether it was your
21 responsibility at that time to make a determination
22 about whether Officer Kaminski's use of force was
23 in -- within the policy guidelines. Do you remember
24 him talking to you about that?

25 **A** Yes, I do.

1 **Q** Okay. Even though it was not your
2 responsibility at the time you were filling out the
3 report to make that determination, did you ever form
4 an opinion about whether Officer Kaminski's use of
5 force was appropriate and in line with the policies
6 of the Ferguson Police Department?

7 **A** Yes, I did.

8 MR. DOWD: I'll make an objection as to
9 undisclosed expert testimony. We asked an
10 interrogatory on it. We do have a scheduling order
11 as to the disclosures. Subject to that, you can
12 answer the question.

13 MS. WESTERING: Join in the objection.

14 MS. SHAFaIE: Let me ask him a few
15 questions --

16 MR. DOWD: Yeah, don't worry about it.
17 Anything we say is for the record. You don't have
18 to worry about anything until she says don't answer
19 the question.

20 **Q** (By Ms. Shafaie) You talked to Mr. Dowd
21 about the fact that normally when you're going
22 through a use of force report you do make a
23 determination about whether the use of force was
24 appropriate. Do you remember that?

25 **A** Yes.

1 Q And you said that typically it's just part
2 of going through the report. And then at the end,
3 you may refer to reports or you may refer to general
4 orders and then make a decision about whether you
5 think the use of force is appropriate.

6 A Yes.

7 Q And then do you remember that you said
8 that your determination would then get forwarded up
9 the chain of command? Do you remember that?

10 A That's correct.

11 Q Okay. And so in this situation when you
12 were doing the use of force report, was there
13 anything preventing you from making a personal
14 opinion as to whether the use of force was
15 appropriate or not?

16 A No, there wasn't.

17 Q And so you would agree that you make
18 determinations about whether use of force is
19 appropriate all the time?

20 A Yes.

21 Q And had you -- and you were at this time
22 the lieutenant of Officer Kaminski. Is that right?

23 A That's correct.

24 Q Do you ever make disciplinary decisions
25 based on a use of force or other action by one of

1 your officers?

2 A Yes, I have.

3 Q If you had felt Officer Kaminski did not
4 use the appropriate amount of force, would you have
5 disciplined him?

6 A Yes, I would.

7 Q Okay. Did you discipline him in this
8 case?

9 A No, I did not.

10 Q Why didn't you discipline him?

11 A From the facts that I had at the time, I
12 thought that Officer Kaminski had followed
13 departmental policy and acted within our guidelines.
14 However, I left that block open in case someone --
15 you know, like I said, I didn't have access to any
16 medical examiner or anything else, any further
17 investigations. So I wanted to leave that open and
18 not just have a door slammed shut that said, yeah,
19 we did it the right way.

20 Q At any point after you completed this
21 report, did you issue any discipline to Officer
22 Kaminski?

23 A No.

24 Q Okay. Why not?

25 MR. DOWD: Objection, form and foundation.

1 MS. WESTERING: Join.

2 A There was nothing that I found to be wrong
3 with the initial reports that I had. And I never
4 heard back from anyone in a higher position telling
5 me to either investigate it or that they had
6 investigated it and found him to be at fault with
7 anything.

8 MS. SHAFATIE: Okay. I don't have any
9 further questions at this time.

10 EXAMINATION

11 QUESTIONS BY MR. DOWD:

12 Q Lieutenant, a couple follow-up questions.
13 When did the policy change at City of Ferguson
14 Police Department regarding requiring officers to
15 carry mace?

16 MS. SHAFATIE: Object to foundation.

17 MR. DOWD: Well, he testified earlier that
18 there was a time that because certain officers had
19 an aversion or allergy, whatever, that they were no
20 longer required to carry it. I'm asking him when --

21 Q (By Mr. Dowd) Is that accurate, what I
22 just said?

23 MS. SHAFATIE: I think that misstates his
24 testimony. You can --

25 A I think what I -- I think you're pretty

1 accurate on what you just said.

2 Q (By Mr. Dowd) Okay.

3 A That I did say that.

4 Q Okay.

5 A And the policy still says that you carry
6 both.

7 Q Okay.

8 A However, I am not going to hold Officer
9 Kaminski to that because I've seen the effects of
10 mace on him.

11 Q Understood. So while the policy is
12 written, you're using your command decision-making
13 to make an adjustment and exception for --

14 A No, I actually thought it was for officer
15 discretion. And then when I reread the policy, I've
16 been wrong.

17 Q Okay. So the policy requires them to have
18 it, correct?

19 A I believe so.

20 Q But you are saying based on your
21 discretion as a commander, as a lieutenant --

22 A I had -- I had --

23 Q -- to require -- you could relieve him of
24 that requirement because you thought that was safer.
25 Is that a fair statement?

1 **A** No. I had the impression that it was
2 officer discretion between taser and OC.

3 **Q** I see.

4 **A** And so I let him choose the taser, knowing
5 that the OC would -- you know, affected him the way
6 that it does.

7 **Q** What's your understanding now? I thought
8 you were saying that was your understanding is they
9 had a choice, but then you looked at the policy
10 again.

11 **A** Right. I reread the policy and I don't
12 believe they have a choice. I think it says that --

13 **Q** And so my statement is the policy as
14 written is that they are supposed to have one of
15 each so they have both tools available, correct?

16 **A** That's the way the policy reads. I
17 believe so, yes, sir.

18 **Q** And you've made a decision based on your
19 experience that you're going to relieve -- you're
20 going to allow him to, you know, quote-unquote, not
21 comply with the policy because you're aware of his
22 specific problems with OC, and you think it's safer,
23 correct?

24 MS. SHAFAT: Object to form.

25 **Q** (By Mr. Dowd) So he's deviating from

1 policy based on your allowing him to?

2 MS. SHAFATIE: Object to form and
3 foundation. You can answer.

4 Q (By Mr. Dowd) I'm just trying to make the
5 record clear.

6 MS. SHAFATIE: Same objection. You can
7 answer.

8 A Under -- my understanding of that policy
9 was that it was discretion, you know, officer
10 discretion. Since Officer Kaminski was -- has such
11 a reaction to OC spray, I told him, sure, carry the
12 taser, don't carry the OC. I mean, I'm sorry, I
13 made that mistake.

14 Q (By Mr. Dowd) No, that's okay.

15 A But that's what happened. It happened.

16 Q That's fine. So there was some discussion
17 when your attorney was asking you questions about
18 enough tasers to go around. Is it safe to say that
19 Officer Kaminski always has a taser because he can't
20 carry mace?

21 MS. SHAFATIE: Object to foundation. You
22 can answer.

23 A When --

24 Q (By Mr. Dowd) If you know.

25 A Yes. When Officer -- when we first got

1 the tasers in, Officer Kaminski carried the taser.

2 Since this incident, Officer Kaminski has not

3 carried a taser.

4 Q Okay. Why is that?

5 A I -- I don't know.

6 Q Was that your decision for him not to

7 carry one?

8 A No, sir.

9 Q Do you know whose decision it was?

10 A No, sir. I believe it's probably Officer
11 Kaminski's.

12 Q Okay. So he is on the street without mace
13 or a taser?

14 A No, sir. He's currently working on the --
15 in the jail.

16 Q Okay.

17 A But we don't have the tasers, you know,
18 the amount for everybody to have a taser. So
19 Officer Kaminski is one of those now, or since he's
20 gone back out onto the street, that doesn't. So he
21 carries a night stick or a --

22 Q Baton?

23 A -- baton.

24 Q So was -- and I think I understand, but
25 I'll just ask to avoid any objections. Is Officer

1 Kaminski -- his active duty right now is on the
2 street?

3 A Currently, he's filling in in the
4 corrections facility --

5 Q Okay.

6 A -- because we've had so many corrections
7 officers leave that we don't have coverage. So he's
8 working there while he's rehabbing his arm.

9 Q When did he stop using a taser, to your
10 knowledge, after September 17th, 2011?

11 A I don't really know, sir, because he was
12 transferred from my platoon a few months after that,
13 I believe.

14 Q And had he stopped using a taser before he
15 was transferred from your platoon?

16 A I don't recall. I don't really remember.

17 Q You don't recall either way? If I
18 understand your prior testimony correctly, and I'd
19 ask you to correct me if I'm wrong, in September of
20 2011 you did not make a formal determination of
21 Officer Kaminski or Officer White's use of force and
22 the appropriateness of that. Is that correct?

23 A That is correct, I didn't make the
24 official --

25 Q Right. You didn't go through all the

1 steps necessary, further discussions, and document
2 that?

3 MS. SHAFAT: Object to foundation. You
4 can answer.

5 A I went through what was required by
6 policy.

7 Q (By Mr. Dowd) Meaning you filled out the
8 use of force report?

9 A Correct.

10 Q But you did not indicate at that time
11 whether you -- it was your opinion one way or the
12 other whether the use of force was appropriate?

13 A Correct. The seriousness or the nature, I
14 was going to allow someone above, which is on the
15 form there, the division commander.

16 Q So if the officer -- if you had determined
17 that the officer had used excessive force under the
18 circumstances in any of the taser applications, the
19 first, second or the third, would you automatically
20 have had to discipline him?

21 A I would have completed the block there
22 with -- follow however that's worded, follow
23 department policy or --

24 Q Right.

25 A -- whatever. I would have checked -- if

1 it was not in compliance, I would have checked no.
2 I would have immediately started my own separate
3 investigation, forwarded that along with the taser
4 and police report up the chain.

5 Q And you didn't go through any part of that
6 process?

7 A No, sir, I did not.

8 Q Okay. And so you didn't make a formal
9 evaluation of whether or not he had violated the
10 policies and procedures when he tased that day based
11 on the facts you knew at the time?

12 A Correct.

13 Q Do you understand -- or do you intend to
14 render an opinion at the trial of this matter as to
15 whether his use of force was appropriate?

16 A I have no idea what I'm going to be asked
17 at the trial.

18 Q Okay. And as you sit here today, the only
19 opinions you may have are based on what you learned
20 at the time and that are contained in the reports
21 that you reviewed today?

22 A Correct.

23 Q Okay. When you told -- this is a little
24 bit of proving a negative here, but I'm going to try
25 to ask you anyway. You did not make a determination

1 whether the use of force was appropriate and you
2 also did not make a determination as to whether or
3 not any discipline was appropriate, correct?

4 MS. SHAFAT: Object to form and
5 foundation. You may answer.

6 A Yes. I didn't make a determination.

7 Q (By Mr. Dowd) Okay. And any opinion that
8 you would have on that would be based on the
9 information that Officer Kaminski had tased the
10 naked man for five seconds, gave him the appropriate
11 opportunity to comply, he attempted to get up, he
12 gave him another five-second taser application, gave
13 him another opportunity to comply, a fair and
14 reasonable opportunity to comply, and then gave him
15 a third application at which time he was handcuffed,
16 following which he stopped breathing and died.
17 That's the scenario and the facts that you knew at
18 the time, correct?

19 A Yes.

20 MS. SHAFAT: Form and foundation. You
21 can answer.

22 A Yes.

23 Q (By Mr. Dowd) So I assume because you're
24 his supervising officer and we're here today and
25 your attorney is asking you these questions, you're

1 of the opinion based on those facts that the
2 appropriate use of force was used by Officer
3 Kaminski and Officer White?

4 A Yes, sir. I had no other evidence to
5 contrary.

6 Q Have you ever seen a taser firing sequence
7 download report that has the actual times the taser
8 trigger was pulled and the intervals in-between
9 those?

10 A No, sir. I have no access to any of that.

11 Q Okay. That wasn't provided to you by
12 counsel today?

13 MS. SHAFATIE: I'm going to object.

14 A I --

15 Q (By Mr. Dowd) You've never seen the taser
16 download report in this case?

17 MS. SHAFATIE: If you've seen it, yeah.

18 A I haven't seen it.

19 Q (By Mr. Dowd) Have you ever seen a taser
20 download report?

21 A I have never seen a taser download report.

22 Q Would you think that under the scenario I
23 just described it's the basis of your opinion that
24 if less than one second between one of the taser
25 applications would be sufficient for the gentleman

1 to comply or for Officer Kaminski to make a
2 submission assessment?

3 MS. SHAFATIE: Form and foundation. You
4 may answer.

5 A I don't think one second would be enough.

6 Q (By Mr. Dowd) Okay.

7 A If that was your question to me.

8 Q Yes, it was. So same question, but less
9 than one second would not be enough either, correct?

10 MS. SHAFATIE: Same objection. You may not
11 answer.

12 A That's correct, less than a second
13 wouldn't be enough.

14 Q (By Mr. Dowd) Okay. And in the scenario
15 that you're familiar with in which the man is on the
16 ground and he's naked and he's attempting to get up,
17 would you agree that two seconds is probably not
18 even enough time for the subject to comply after
19 he's hit the ground, after the first taser
20 application and the officer's watching him?

21 MS. SHAFATIE: Same objections. You can
22 answer.

23 A I don't think two seconds would be enough.

24 Q (By Mr. Dowd) Enough time to make a --

25 A Correct.

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 184

1 **Q** -- submission assessment? That's correct?

2 MS. SHAFIAE: Same objections.

3 **A** Correct.

4 MR. DOWD: Okay. I don't have anything
5 further of this witness at this time.

6 MS. WESTERING: I don't have any
7 questions.

8 MS. SHAFIAE: I don't have any questions.

9 COURT REPORTER: Signature?

10 MS. SHAFIAE: We'll read.

11 VIDEOGRAPHER: We're off the record at
12 1:14.

13 SIGNATURE WAIVED, BY AGREEMENT OF COUNSEL

14 AND WITNESS

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1 State of Missouri

2 SS.

3 County of St. Charles

4 I, Julie A. Bulard, do hereby certify that
5 pursuant to Notice in the civil cause now pending
6 and undetermined in the United States District
7 Court, Eastern District of Missouri, Eastern
8 Division, to be used in the trial of said cause in
9 said court, I was attended at the offices of Pitzer
10 Snodgrass, PC, 100 South Fourth Street, Suite 400,
11 in the City of St. Louis, State of Missouri, by the
12 aforesaid attorneys; on the 25th day of September,
13 2015.

14 The said witness, being of sound mind and being
15 by me first carefully examined and duly cautioned
16 and sworn to testify the truth, the whole truth, and
17 nothing but the truth in the case aforesaid,
18 thereupon testified as is shown in the foregoing
19 transcript, said testimony being by me reported in
20 shorthand and caused to be transcribed into
21 typewriting, and that the foregoing pages correctly
22 set forth the testimony of the aforementioned
23 witness, together with the questions propounded by
24 counsel and remarks and objections of counsel
25 thereto, and is in all respects a full, true,

1 correct and complete transcript of the questions
2 propounded to and the answers given by said witness;
3 that signature of the deponent was not waived by
4 agreement of counsel.

5 I further certify that I am not of counsel or
6 attorney for either of the parties to said suit, not
7 related to nor interested in any of the parties or
8 their attorneys.

9 Witness my hand at St. Charles, Missouri, this
10 6th day of October, 2015.

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Julie A. Bulard

Julie A. Bulard

CCR MO #835



Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 187

1 GorePerry Reporting & Video

2 Wednesday, October 07, 2015

3

Ms. Ida S. Shafaie

4 Pitzer Snodgrass

100 South Fourth Street, Suite 400

5 St. Louis, MO, 63102

6 Re: Deposition of William Ballard

Date:Friday, September 25, 2015

7 Case:Tina Moore, et al. vs. Brian
Kaminski, et al.

8

9 Ms. Ida S. Shafaie

10 Your witness did not waive the right to read and sign
his/her deposition in the above referenced matter.

11 Enclosed is the copy of the deposition you ordered,
together with errata sheets and additional signature
12 page. Please instruct your witness to read the
transcript, list any corrections (including page and
13 line number) on the errata sheets, sign and date the
errata sheets and signature page.

14

Within 30 days, please return the errata sheets and
15 signature page to our office for further processing.

16 Your prompt cooperation will be appreciated.

17

18

19

20

21 Sincerely,

22

23 Production Department

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Page 188

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Page 189

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Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 190

1 Comes now the witness, William Ballard,
2 and having read the foregoing transcript
3 of the deposition taken on 9/25/2015,
4 acknowledges by signature hereto that it is a
5 true and accurate transcript of the testimony given
6 on the date hereinabove mentioned.

7

8

9

10 _____
William Ballard

11

12 Subscribed and sworn to me before this
13 _____ day of _____, 20____.

14 My Commission expires

15

16

17

18 _____
Notary Public

19

20

21

22

23

24

25

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 191

1 COURT MEMO

2

3

4

5 Tina Moore, et al. vs. Brian Kaminski, et al.

6

7

8 CERTIFICATE OF OFFICER AND

9 STATEMENT OF DEPOSITION CHARGES

10

11 DEPOSITION OF William Ballard

12

13 9/25/2015

14 Name and address of person or firm having custody of
15 the original transcript:

16

17 Dowd & Dowd

18 211 North Broadway, Suite 4050

19 St. Louis, MO 63101

20

21

22

23

24

25

1 ORIGINAL TRANSCRIPT TAXED IN FAVOR OF:

2

3 Dowd & Dowd

4 211 North Broadway, Suite 4050

5 St. Louis, MO 63101

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25

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 193

1 Upon delivery of transcripts, the above
2 charges had not been paid. It is anticipated
3 that all charges will be paid in the normal course
4 of business.

5 GORE PERRY GATEWAY & LIPA REPORTING COMPANY
6 515 Olive Street, Suite 700
7 St. Louis, Missouri 63101

8 IN WITNESS WHEREOF, I have hereunto set
9 STATEMENT OF DEPOSITION CHARGES

10 my hand and seal on this _____ day of _____

11 Commission expires

12 _____

13 Notary Public

14

15

16

17

18

19

20

21

22

23

24

25

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 194

A	actions 105:5,15 106:18 138:22	agree 10:2 65:4,24 66:25 67:6,22	Alzheimer's 159:7	176:3,7,22 179:4
A.D.R 1:5 2:9	activated 124:23	70:5 71:3 73:8	ambulance 45:22	181:5,21 183:4,11
a.m 34:5	125:10	81:18 82:6,22	45:23 46:2,6 87:2	183:22
abbreviations	active 37:22 178:1	90:23 129:9	87:6,16,19 92:22	answers 9:9 186:2
47:12	activity 160:7	134:16,18 135:3	93:2,6,6,12 94:2	anticipated 193:2
ability 131:21	actual 182:7	136:18 137:20,24	94:12,23 95:2,3	anybody 10:20
137:7	additional 22:8	138:3,7 145:7	96:5,8 154:6	anyone's 31:3
able 65:6 68:24	70:2 150:18 155:4	151:13 152:2	ammunition 11:16	anyway 180:25
83:14 84:1,18	187:11	158:24 162:1	amount 49:6	appear 143:8
85:17,23 124:13	additions 29:11	171:17 183:17	139:13 172:4	145:10 147:5,8,12
147:2 158:7	address 142:2,3,5	agreed 79:1	177:18	153:6 157:14
abnormal 40:18	142:16 191:14	agreement 184:13	amplified 132:22	APPEARANCES
abnormally 91:22	adjustment 174:13	186:4	analysis 32:6 81:20	3:1
abrasion 152:22	administered 64:11	ahead 7:13 53:22	analyze 32:2	appeared 89:1 90:1
155:16	77:3	68:3 74:12 80:12	angle 51:8 53:17	153:17
abrasions 92:9	admissibility	127:25 168:18	54:22	appears 68:17 79:3
101:21 118:21	148:25	aim 12:12,20 59:21	angry 160:10	79:10 108:19
119:21	admitting 128:21	Airport 34:20 37:4	annual 11:5,10	120:1 142:2 147:4
abrupt 14:7	adrenaline 134:9	38:8 46:13 47:5	14:21 29:4 59:18	153:17 157:17
abuse 136:1,8	advance 57:16	47:14 48:15,22	annually 11:8	applicable 161:15
137:18	advanced 101:3	49:13 54:21 56:14	answer 9:10 10:1	161:16
abusive 58:21 59:8	advancing 69:22	66:9,13 67:18	11:21,21 19:3	application 64:18
academy 7:24 13:3	71:7 72:16	97:24 124:3	21:9 32:16 47:24	64:20 68:8 69:22
15:10 16:1 28:21	advertised 113:10	126:14,16 128:6	56:24 59:1,14,24	73:5,16 77:1 78:8
131:19 132:7	113:12	al 1:12 2:15 6:6,6	60:5 61:22 65:10	78:10 79:2,13
accelerates 160:22	advise 97:16	187:7,7 191:5,5	66:5,16 67:8 68:1	80:20 81:2,7,16
access 29:8 167:9	advised 92:16	Alan 122:2	68:4,11 69:5 70:6	88:3 111:20
167:13 172:15	affect 169:13	Allen 24:9 26:10	70:15,15 71:9,22	115:12,17,18,20
182:10	aforementioned	27:24 46:16,19	72:10,12,23 73:12	115:22 116:5
accurate 11:3	185:22	Allen's 46:14	73:20 75:2 76:5	118:17 119:12
67:14 150:8	aforsaid 6:25	allergic 40:18 42:12	76:20 77:13,20	152:7 160:22
173:21 174:1	185:12,17	168:7	78:14 79:7,15	181:12,15 183:20
190:5	African-American	allergy 70:23	80:17 81:22 82:12	applications 82:8
acknowledge 29:10	91:21	173:19	82:21 83:5,8,11	84:3 179:18
30:7 31:13,20	age 6:23 112:9	allow 13:24 72:18	84:5,14,16 85:13	182:25
acknowledges	agenda 21:14,15	175:20 179:14	85:21 104:12	applied 71:1
124:9 190:4	aggressive 12:11	allowed 80:1 82:7	111:11 129:15,25	114:10 120:10
acknowledging	aggressively 69:22	allowing 176:1	131:11 132:2,18	applies 78:6
31:22	72:24	allows 129:10	132:25 133:6	apply 74:12
acquired 62:19	agitated 159:9,13	alongside 94:2	134:1,14 135:1,13	appreciate 16:15
act 160:5	159:23 162:14	alternate 168:10	135:23 136:4,11	appreciated 187:16
acted 151:4 172:13	ago 8:23	alternative 70:21	152:17 161:1,2,20	apprehend 157:1
acting 109:19	agonal 89:15	116:17	163:3 165:9 166:4	approach 13:8 14:8
action 171:25			168:18 170:12,18	approached 38:14

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 195

38:19 88:25 89:25 90:11 92:25 approaching 14:4 39:23 72:24 81:1 appropriate 9:11 79:13 99:22 100:23 102:19 105:14 170:5,24 171:5,15,19 172:4 179:12 180:15 181:1,3,10 182:2 appropriateness 104:24 178:22 approval 108:12 approve 19:2 98:6 approved 98:6,8,9 98:12 approximate 117:1 approximately 16:5 18:19 19:22 21:21 34:3 36:2,8 41:7 63:5 85:1,7 approximation 117:13 area 58:11 67:19 areas 143:3 argumentative 77:23 133:10,13 arm 41:19 70:10,12 70:21 71:16 72:18 73:16 76:9,10 82:3 153:19 155:8 157:4 163:6 178:8 armed 12:11 arms 83:14 86:15 120:6 arrest 82:25 83:9 145:16 146:23 150:16 153:10 155:1 156:22 arrested 87:17 101:7 146:18 arrestee 101:3,6,18 101:25 151:5	arrival 36:15 117:22 121:22 arrived 36:5,22 38:8 43:24 50:5,9 50:17,23,25 52:5 52:20 83:13 92:20 92:22 117:25 124:20 125:25 arrives 47:20 56:13 73:18 arrow 127:2 art 9:21 aside 71:3 asked 10:3 20:22 38:15 52:17 83:9 138:25 139:21 140:4 164:24 169:15,20 170:9 180:16 asking 7:8 62:12,13 67:11 78:24 86:3 92:1 144:18,21,23 148:19 173:20 176:17 181:25 aspects 76:7 assault 110:12,16 111:18,21 147:19 assess 78:9,12 80:9 80:18 assessment 67:22 69:3 70:1 78:2 80:23 81:20 82:18 90:23 100:1 183:2 184:1 assist 169:3 assume 10:24 33:25 67:12,21 73:5 78:25 80:25 81:10 81:13 126:10 128:12,18,20 131:5 132:6 150:8 181:23 assuming 67:13 85:8 111:19 113:2	128:14 attached 5:23 102:21 attachments 44:23 attack 82:25 83:3 attempt 130:8 attempted 64:3 120:8 157:5 181:11 attempting 81:17 183:16 attempts 64:19 attended 185:9 attending 21:22 attention 88:22,23 95:3 attorney 176:17 181:25 186:6 attorneys 8:25 9:1 10:14 107:11 185:12 186:8 August 147:14 149:14 authentication 149:3 authored 43:7 166:13 authoring 98:3 authority 13:19 authorized 70:9,11 70:19,20 121:5 automatic 97:12 automatically 44:1 97:12 115:1,3 139:7 179:19 automobile 35:15 available 15:21 22:9 59:19 74:10 74:19 158:4 161:13 162:10 175:15 Ave 3:14 Avenue 192:16 aversion 168:13	173:19 avoid 82:15 146:18 177:25 aware 26:23 28:6 32:6 76:2 81:1,11 103:22,25,25 164:24 175:21 <hr/> B <hr/> B/M 47:4 back 16:8 17:10 23:13,20 31:24 42:25 43:1 54:6 55:1 59:3 63:22 63:23 64:12 65:2 65:6 72:11 76:23 77:4,10 79:23 83:12,14 84:2 88:19,22,23 91:16 94:12 109:20 114:4 120:11 121:6 122:21 129:5 133:22 139:17 141:14 142:25 143:11 146:12,21 148:14 149:10 150:22 158:16 163:21 173:4 177:20 backed 57:24 93:4 background 7:19 backup 47:20 81:24 82:18 124:14 bad 59:17 badge 142:13 bags 35:8 Ballard 1:17 2:20 6:5,22 7:15 142:15 187:6 190:1,10 191:11 Ballard's 140:14,15 140:21 bar 76:10 155:8	157:4 barely 167:17 bars 163:6 based 42:9 66:18 70:16 72:23 74:20 78:5,21,22,25 83:24 87:15 88:10 89:24 94:17 99:9 117:13 121:2 126:12 171:25 174:20 175:18 176:1 180:10,19 181:8 182:1 basement 24:3 104:17 basically 100:9 102:19 108:8 116:2 117:10 120:1 basis 28:7 30:1,18 32:14 59:18 85:15 182:23 Bates 139:25 140:2 baton 41:19 69:8 70:22 71:12 72:3 72:21 74:15,25 76:9 78:7 79:25 80:11 129:22 177:22,23 Baty 3:13 192:15 Beard 155:8 beating 56:3 69:12 129:21 Bebe 10:20 34:1,22 38:13 52:13,19 92:19 96:7 106:15 began 57:5,25 91:16 92:13 145:15,18 146:17 beginning 34:6 108:16 begins 150:19 151:4 behalf 2:21 9:1
--	--	---	--	--

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 196

148:20 behavior 110:10 belief 33:10 116:16 154:2 believe 14:24 15:3 17:24 19:23 23:17 24:9 33:11,18 37:3 44:22 52:7 54:22 63:8 64:21 75:11,14 76:21,25 86:20 89:22 91:5 93:5 95:24 96:8 105:12 106:21 111:12 112:11,25 121:16,18 122:6 123:4 126:4 127:9 135:2,5 138:12 143:11 156:18 167:16 174:19 175:12,17 177:10 178:13 believed 107:8 115:6 best 9:9 23:15 26:8 33:3,4 37:20 38:21 51:11 52:6 53:9 80:20 94:24 103:13 154:20 better 85:25 129:18 139:2 big 84:19 85:2 113:19 bigger 84:23 132:11 biggest 60:13 Bill 6:15 7:5 bill@dowdlaw.net 3:9 Billy 142:15 bit 7:18 49:10 180:24 blades 150:23 blank 25:9 blaster 95:8	bleed 153:21 block 100:10 105:4 127:21 172:14 179:21 blocking 124:24 125:4 126:16 blocks 37:7 blue 91:22 body 12:12,14,20 59:11,21 60:1,8 60:14 73:2 121:12 160:23 163:6 Boeing 49:5,7,12 49:15 bomb 166:8 Booked 111:5 bother 21:3 bottom 102:3 box 101:11,25 126:18 127:4,25 144:15 boxes 100:23 102:24 brand 98:17 Brannan 61:16,17 61:17 Brannan's 61:25 Brannon 62:7 break 34:24 88:15 93:18 136:15,20 136:23 152:24 breaks 167:20 breasts 60:11,12 breath 89:19,21 breathe 90:2 breathing 38:17 39:9 89:1,16 90:1 90:5,7,9,15,19,19 91:7,9,13 92:17 120:24 160:8 181:16 Brian 1:12 2:15 6:6 187:7 191:5 brief 93:22 120:1	briefly 98:5 104:4 139:25 bright 125:17 bring 29:15 69:23 72:3 140:16 Broadway 3:6 191:18 192:4 brought 67:20 68:8 93:2 115:15 164:13,15,20 168:11 bruises 101:20 bruising 39:25 92:7 101:21 buckshot 116:1 budget 11:15 building 54:7,17,18 109:20 built 67:1 113:10 Bulard 2:25 6:10 185:4 186:17 bulletins 61:3,8,13 62:8 burst 64:11 77:3 business 134:21 148:20 149:18,25 193:4 <hr/> C <hr/> c 110:13,16 CAD 43:13,23 Cain 122:14 call 14:5 22:16 24:6 29:15 34:10,12,13 34:18,25 35:5,12 36:3,9,20 44:16 44:17 45:22,25 46:1 100:19 109:13 110:7 164:11,15,20 called 19:10 30:15 44:25 87:7 91:1 106:4,15 calls 19:3	calming 14:11 cameras 121:12 canisters 40:22 canvass 95:16 capacity 8:5 captain 31:2 33:4 95:25 97:15 103:1 103:4,7,8,14 104:1,3,8,25 105:18 106:4,21 165:16,17,22 captains 19:18,20 20:7,13 137:3 car 35:12,13,16 38:20 44:3,7 53:5 54:6,10,12,15,20 81:3,4 90:13 124:17,18 126:3,4 126:7,10,11,12,18 127:12 128:3,9,19 128:20 129:1,5,8 145:17,21 cardiac 82:25 83:9 care 109:9 119:23 169:10 career 10:23 131:5 carefully 185:15 carried 177:1,3 carries 177:21 carry 14:19 167:25 168:3,21 173:15 173:20 174:5 176:11,12,20 177:7 carrying 168:15 cars 35:3 56:3,5 121:9,9 125:24,24 129:6 cart 139:7 cartridge 114:9 116:6,10,19 case 6:25 8:12,13 8:15,16,18,21 52:14 59:21 91:25	101:1 103:3,23 115:14 140:13 172:8,14 182:16 185:17 Case:Tina 187:7 cases 105:10 catch-all 109:18 cause 1:9 6:5 83:3 118:17 119:10 185:5,8 caused 83:10 119:12 185:20 causing 145:19 cautioned 185:15 CCR 2:25 186:18 center 12:12,14,20 59:10,21 certain 158:4 159:2 166:22 173:18 certainly 70:8,9 CERTIFICATE 191:8 certificates 24:15 certified 6:9,11 24:20 27:4 60:21 60:24,25 61:9 62:3,15 75:17 142:7 161:23 certify 185:4 186:5 cessation 40:7 chain 25:11 97:18 97:18 106:20,25 130:4 171:9 180:4 change 20:14,18 49:9 72:25 77:17 112:5 173:13 188:2,5,8,11,14 188:17,20,23 189:2,5,8,11,14 189:17,20,23 changed 22:5 66:3 67:23 changes 81:20 changing 132:23
--	---	--	--	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 197

charge 13:20 18:25 19:1 31:7 103:10 110:18 165:12,15 charged 110:25 111:9,13,20 112:1 charges 110:12 191:9 193:2,3,9 Charles 7:23 13:4 185:3 186:9 check 30:15,23,25 87:17 91:8 100:10 100:23 101:10 112:12 checked 91:6 101:1 101:2,25 179:25 180:1 checking 99:6 102:23 checks 30:22,24 chest 39:1 58:10,22 59:10 67:19,21 69:20 91:16 92:13 92:20 93:12,13,24 94:3,22 115:14 117:7 118:2,3 157:7,9 Chicken 37:4 chief 10:20 19:17 20:6,13,19 22:9 97:17 105:20 107:1 130:2 137:3 137:6 chief's 103:19 104:14 106:1 108:12 child 135:8 choice 175:9,12 choose 175:4 Christian 109:8 circle 50:18 circled 113:7 118:18 119:12,17 120:18 circles 37:9	circumstances 13:24 17:11 33:21 179:18 CIT 15:5,6,8,17 16:1,4,16,20,25 17:6,13 130:12 161:13,15,21,23 162:1,21,25 163:7 CIT-trained 130:5 130:9,20 164:25 165:6,8 166:2,8 citizen 130:22 145:6 146:4 147:8 148:7 151:17 152:3 154:10 157:25 city 2:23 3:15 8:10 110:18 111:21 173:13 185:11 192:17 civil 185:5 claim 157:18 claiming 101:8 clarify 140:22 162:20 class 15:18 60:7 74:16 classes 15:11 22:8 22:14 classified 110:8 clean 157:18 cleaning 41:8 46:14 clear 9:5,24 119:11 176:5 clearly 9:9 clicking 140:20 clients 148:20 close 18:13 82:19 115:21 124:4,13 129:5 closed 55:5 57:17 58:2,12 64:5,13 77:4 83:15 86:17 87:3 89:2 92:12	110:13 120:7,10 143:22 150:22 closer 50:11,12 51:6,7,9 53:24 54:7 clothes 110:9 113:14 clothing 95:12 113:18,20 clue 23:25 138:21 coat 113:18 coats 113:19 collar 44:24 coloration 91:20 combat 71:15 combative 74:4 come 14:9 20:23 23:7 42:3,7 107:16 113:22 116:11 131:6,15 comes 23:4 132:7 190:1 coming 56:2 81:3,4 90:13 124:17,18 comma 47:4 57:24 57:25 58:1,10 64:2,3,4,11 77:3 86:15 88:25 120:6 120:23 145:18,21 command 16:23 41:22,22 97:18 106:21,25 130:4 150:6 162:23 171:9 174:12 commander 18:24 18:25 31:11 147:21 174:21 179:15 commanders 19:7 commands 155:7 comments 150:19 153:17 155:4,5 commercials 94:5 Commission	190:14 193:11 committing 126:9 commonly 14:2,3 communicated 61:8 134:22 communicating 32:13 communications 122:25 123:1 community 22:1,22 23:12 28:3 COMPANY 193:5 comparable 48:24 complaints 153:23 complete 146:13 149:4 186:1 completed 43:11 106:5 107:21 169:16 172:20 179:21 completely 47:4,14 completion 24:16 compliance 64:19 77:25 116:4,20 137:8 147:3 180:1 compliant 120:23 129:20 complicated 100:4 complied 50:19 51:17,20 53:20 54:5 105:15 120:13 126:22 127:6 128:2 150:24 153:24 comply 79:12 105:5 157:3 175:21 181:11,13,14 183:1,18 complying 18:20 19:8 32:8 58:23 compound 133:10 133:14 compressions 91:16 92:13,20 93:12,14	93:25 94:3,22 computer 29:8 30:8 30:14,16 31:23 112:12,22 con 71:25 concerned 169:9 concrete 152:20,21 condition 160:12 160:14 conduct 105:15 conducted 22:16,17 confident 104:20 confirm 156:20 confirmed 91:12 cons 71:20 consequences 138:22 considered 101:18 consistent 56:20 59:11 139:12 157:14 constituted 101:24 constitutional 25:6 25:25 28:5,18 contact 115:9 contacts 17:8 contained 120:2 149:22 150:7,12 180:20 contents 149:1 continue 74:5 continued 57:16 93:15,24 143:24 143:25 145:21 146:19 155:7 157:2,6 continues 74:10 continuing 7:24 24:20 continuum 102:18 162:17,22 163:12 continuums 13:14 contract 73:3 75:21 contractions 73:4
---	---	---	---	--

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 198

contrary 182:5	100:24,25 101:4	39:15 47:6 54:23	141:1	156:5 167:21
control 121:5	101:15 102:1,25	55:6 57:18 58:3	curb 50:11,13	180:10 185:12
145:23 157:11	104:25 109:4,6,7	58:13 83:16 86:18	65:25 66:9 128:5	186:10 190:13
158:8	109:10,14,15	87:4 89:3 90:21	128:23	193:10
conversation 97:19	110:2,6,24 111:1	110:14 120:15,25	current 127:1	day-to-day 32:18
97:21,23 98:25	111:2,17 112:14	144:3 145:24	currently 23:20	days 19:4 33:15
cooperation 187:16	114:14 115:10,11	146:25 151:1,7	26:17 177:14	154:22 165:23
copy 42:24 187:11	116:7,8,12,20	154:1 155:13	178:3	187:14
192:7,13	117:4,14,24 118:8	178:18 185:21	custody 25:11	deal 131:1,3 137:25
corner 54:8,24 63:3	118:10,11,13	counsel 3:1 6:13	38:12,19 152:4	138:4,8 162:13
63:10 126:17	119:15,18 120:3	139:20 142:24	191:14	dealing 138:14
Corporation 49:8	120:13,19 121:7	182:12 184:13	custom 108:4	169:6,7,7
correct 9:3 11:3,6	121:23 123:1	185:24,24 186:4,5	cut 32:22	dealings 112:17,20
12:6,13,21,22	124:19 125:2	County 7:23 15:10	cycle 114:13,18,19	death 97:8,11
13:16 14:12 23:2	129:2,3,6 130:18	24:18 28:13,21,22	115:1 120:9,9,11	106:8,19 119:4,10
26:2 27:20 30:8,9	131:3,4,16,21,25	185:3	120:13,23	137:22 138:10
31:22,24 34:8,16	132:24 133:5,7	couple 62:21 63:12	cycles 114:10,24,25	155:23 160:15
35:4 37:24 40:8,9	134:2,12,24	143:6 154:22		164:17,21
40:11 41:21,24	135:14 137:4,5,10	159:22 164:8	D	deathly 168:7
43:12 44:8 46:10	137:11 138:25	173:12	daily 30:18	debate 133:20
46:14 47:10,15	139:14 143:17	course 28:19 63:17	danger 76:8	decided 20:20
48:19,20 49:17,18	144:7 145:4,5	149:18 152:23	dart 115:9,13 117:7	decision 79:22
49:20,21 51:3,13	146:2,8,9 147:3,9	193:3	darts 60:14 88:5	105:18 171:4
54:14,19 55:10,18	147:10,20 148:2,3	courses 28:16,17	113:11 115:20	175:18 177:6,9
55:20,21,23,24	148:8,9 149:5,19	court 2:1 5:22 6:7	116:10 117:2,15	decision-making
56:1,9,14,15,16	149:20 150:1,13	6:11 9:7,13 23:16	117:17,21	11:19,25 174:12
57:8,9,19,22	150:16,17 151:2	28:4 128:17 184:9	dash 120:7	decisions 132:24
58:14 59:22 60:13	152:11,12 153:11	185:7,9 191:1	database 112:23	171:24
60:25 61:18 63:11	153:12 154:9,12	cover 22:6 102:10	date 63:2,9 143:12	decontaminated
63:13,14 64:7,8	154:13,23 155:14	118:20	146:13 148:18	148:1
64:15 65:2,19,22	155:17,18 156:1,2	coverage 178:7	187:13 190:6	deescalation 12:24
65:23 66:9,10,11	156:24 157:19,20	covered 23:10,13	Date:Friday 187:6	13:4,7,22 14:2
66:12,14,21,24	158:1,2 159:8	25:15	dated 43:10 98:13	17:10 22:21 23:7
67:4 68:9,21 69:1	162:4 163:8 165:4	covering 24:12	100:18 145:10	23:17,18 47:17,19
69:3,11,24,25	168:1 171:10,23	33:13 96:15	146:11 147:13	56:20,25 57:3
70:10,13,23 71:1	174:18 175:15,23	Cowboy 139:4	149:13 153:7	162:11,12,20,25
71:2,17,18,20	178:19,22,23	created 150:2	154:15 156:21	163:7
72:22 74:17,21	179:9,13 180:12	crisis 15:5 17:7	dates 18:14	defect 17:12
77:8,11,14,19	180:22 181:3,18	45:12,20 46:2	day 2:24 25:21	defend 169:2
78:20 79:5,8 80:2	183:9,12,25 184:1	56:22 79:11 111:8	33:16,18 34:11	defendant 8:16
80:9,15 82:1	184:3 186:1	130:22 138:1,5,9	35:11 40:11 41:15	133:12
86:19 87:5 91:14	corrections 178:4,6	138:15 158:23	45:2 49:7 70:13	defendants 1:14
92:20,21 94:20	187:12	critical 108:11	98:10,13 106:6	2:16 3:19 6:19
99:13,17 100:20	correctly 9:9 30:3	cross-examination	108:9 154:21	139:23,24 140:2,5

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 199

defer 27:23	depend 169:12	171:8 178:20	discipline 105:25	141:22 142:17
definitely 83:21	depended 25:19	180:25 181:2,6	172:7,10,21	148:25 179:1
degree 67:25	depending 11:15	determinations	179:20 181:3	documents 23:19
delayed 35:21	19:12 78:18 108:6	171:18	disciplined 172:5	24:11 62:14 63:17
delirium 159:10,13	depends 78:15	determine 32:8	disclose 140:25	140:25 164:1
159:14 161:11,17	152:18	determined 38:16	disclosures 170:11	doing 13:1 17:17
162:6,14	deployed 58:9 95:6	102:11 111:6	discovered 140:19	19:8 24:10 31:3,5
delivery 193:1	113:10,11 115:20	179:16	164:2	94:3,21 95:15
Delores 1:3 2:8	deploying 115:24	determines 103:15	discovery 141:10	138:20,22 139:11
6:18 107:4	deployment 65:5	deviating 175:25	discretion 74:20	171:12
demeanor 120:21	deponent 186:3	device 120:17,21	105:9,11 174:15	domestic 56:8
dementia 159:6	deposed 8:4,21	devoid 92:5	174:21 175:2	109:25 110:1,2
department 10:16	deposes 6:25	diabetic 159:4	176:9,10	147:19
11:7 15:8,13,23	deposition 1:17	Diabetics 159:4	discuss 116:22	door 127:13 128:4
15:25 18:21 22:14	2:20 5:8,9,10,11	died 63:7 89:6	discussed 21:5,24	128:21 129:2,5
23:11 26:9,16,25	5:12,13,14,15,16	101:18 102:1	23:10 83:24	172:18
27:11,17 28:14,22	5:17,18,19,20 6:4	106:12 107:14	discussion 148:16	doors 113:10 157:8
29:2,3,6 30:12	9:1 10:7,15 52:17	108:2 111:8,19,19	176:16	dots 95:5
31:8 32:2,7,10,12	108:17,18 134:6	118:24 156:5	discussions 10:18	Dowd 3:4,5,5 5:4,6
42:11 46:1,9,25	136:22 158:19	181:16	156:3 179:1	5:25 6:15,15 7:4,6
48:18 58:21 60:20	187:6,10,11 190:3	dies 108:7	disease 17:13	11:22 21:11 32:20
61:7 62:1,7,8,19	191:9,11 193:9	difference 82:24	dispatch 37:14,19	45:14,17,18 47:23
63:18 64:22 73:21	depositions 22:13	different 13:8	37:21 43:17,19,22	48:7 50:24 54:11
74:15 87:9 97:12	describe 49:3	17:15 22:22 73:6	44:18 55:16 81:3	54:12 57:4 59:3,9
99:25 102:14	120:20,21 125:15	73:10 79:17 80:6	122:24 123:23	59:16 60:2,6
105:5,16 106:9	152:11	110:8 113:22	dispatcher 43:25	61:23,24 62:11
107:12 112:20	described 50:16	131:15,20 158:20	123:19 124:12	65:11 66:8,18
130:12 132:14	100:21 118:1	160:4	displayed 120:22	67:6,11,16 68:3
135:16 137:13	182:23	Dilworth 98:7,8,10	dispose 40:24	68:13 69:7 70:5,8
142:5,10 143:9	designed 11:1	98:16 99:2	disruptive 13:18	70:16 71:11,24
149:25 150:6	13:17 68:13 136:1	direct 88:23	distance 117:1,5	72:14 73:14,21
153:7 154:19	136:7 137:17,21	directed 95:4	118:7	74:1 75:3,9 76:13
158:4 161:9 170:6	desire 164:24	directing 50:6	distinction 159:13	76:23 77:15,21,24
173:14 179:23	desired 68:18	direction 127:8	distress 135:9	77:25 78:18 79:9
187:23	Deskbook 30:15,21	130:12 144:1	distributed 61:8	79:23 80:19 81:9
department's	30:22,25 31:23	directions 49:22,23	District 2:1,2 6:7,8	81:10,24 82:15,22
137:17 149:18	destroyed 43:20	directly 21:16	185:6,7	83:8 84:7,14,19
department-issued	detailed 141:23	78:24	disturbance 14:4	85:15,25 88:15,21
58:9	detective 24:8	disabilities 159:2	diverted 95:2	104:16 111:14
departmental	142:9	disburse 143:23	division 2:3 6:8	122:17,23 128:11
151:5 172:13	determination	discard 97:5	31:10,11 103:10	128:15,18 129:17
departments	99:20 103:2,22	discarded 43:20	179:15 185:8	130:2 131:13
135:20 137:1,24	104:8,10 106:22	95:12	DNA 29:18	132:3,10,17,21
138:3	169:21 170:3,23	disciplinary 171:24	document 140:11	133:2,8,12,16,21

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 200

134:3,16 135:3,15 135:25 136:6,13 136:17,20,24 137:1 139:15,20 140:6,10,19,24 141:16 144:14,20 144:23 145:3 148:12,16 149:3,6 149:9,12 151:20 151:23,25 152:2 152:19 158:12,18 160:25 161:8,21 162:19 163:5,18 163:23 164:9,23 166:11,17,21 167:1,3 168:12,17 168:22 169:15 170:8,16,20 172:25 173:11,17 173:21 174:2 175:25 176:4,14 176:24 179:7 181:7,23 182:15 182:19 183:6,14 183:24 184:4 191:17,17 192:3,3 download 182:7,16 182:20,21 Dr 109:9 drastically 66:3 draw 53:17 59:20 88:21 126:18 drawing 127:4 drill 7:22 drinking 80:7 driven 56:5 driver 128:21 driving 46:7 drop 167:21 dropped 68:25 drops 167:20 dry 157:17 due 160:18 duly 6:23 185:15	dump 40:23 dumpster 40:24 41:8 duties 42:13 63:18 duty 33:6 98:10,14 129:22 130:1 137:2 178:1 dying 49:10 <hr/> E <hr/> earlier 27:19 44:13 134:6 158:19 159:2 173:17 early 49:4 162:16 162:21,25 easier 17:23 126:20 east 49:13,17 Eastern 2:2,3 6:8,8 185:7,7 easy 104:19 edge 50:10 education 7:20,25 24:20 educational 7:19 Edwards 155:7,9 155:11,16 effect 14:11 65:22 77:15 effective 67:20 69:21 79:3 effectively 68:17 effectiveness 32:3 effects 76:3 174:9 eight 19:1 either 10:19 16:7 17:11 45:6,19 52:15 54:21 63:17 71:15 78:2 81:2 85:9 86:10 115:23 121:21 135:10 145:4 147:9 156:6 158:22 173:5 178:17 183:9 186:6	elbow 153:2 elderly 135:8 159:6 electricity 73:2 76:1 88:4 electronically 29:9 elevate 161:6 elevated 104:18 160:19 elevates 160:7 email 61:12 62:6 142:1,2,5,6,16 emergency 124:21 124:23 126:2 employed 120:7 employees 49:8 empty 167:4 EMS 92:16,20 EMT 118:15 EMTs 92:23 en 123:25 124:3,4,7 124:8,15 Enclosed 187:11 encountered 158:22 ended 120:11 127:22 ends 104:21 enforcement 65:16 65:17 engaged 96:4 engaging 137:4 entire 31:8 155:5 epaulet 44:24 equally 74:19 equipment 35:11 93:3 121:12 errata 187:11,13,13 187:14 escalate 17:16 163:16 escalated 70:10 especially 25:5 ESTATE 1:3 2:7 estimate 25:22	et 1:12 2:15 6:6,6 187:7,7 191:5,5 etcetera 28:5 30:18 30:18 evaluation 180:9 evening 164:21 event 21:17 43:14 97:4 108:11 everybody 25:25 37:22 41:5 101:10 103:1 131:14 132:6 166:10 177:18 Everything's 97:22 evidence 23:4,12 23:15 25:7,9,25 28:4 114:5 148:22 182:4 exactly 18:11 36:12 41:10 48:4 53:11 72:13 76:6 84:21 123:13 129:7 136:24 159:18 exam 119:7 EXAMINATION 5:3 7:3 164:6 173:10 examine 141:8 examined 139:24 185:15 examiner 119:6 172:16 example 23:11 69:7 71:24 78:7 123:17 124:2 129:18 134:5 examples 13:13 14:1 158:25 exception 42:21 174:13 exceptionally 41:3 48:2,8 excess 15:13 excessive 58:22	82:16 129:11,13 135:20,25 136:6 137:13,16 138:13 179:17 excited 159:9,14,25 160:1 161:11,16 162:6,14 exclusively 99:13 excuse 16:20 20:18 45:15 49:16 81:6 93:21 104:1 117:3 146:20 154:22 exhibit 5:8,9,10,11 5:12,13,14,15,16 5:17,18,19,20,24 42:16 50:15 53:4 54:13 55:1 62:23 62:24 63:9,23 66:1,20 76:24 83:12 88:22,23 96:15 99:12 100:14 108:15 125:1 126:14 127:23 139:21,24 140:1 141:17 142:22 144:15 145:9 146:10 147:11,12 149:12 150:14 153:5 154:14 156:20 exhibits 5:7,21 62:12 166:11,14 166:16 exited 93:2 expect 24:12 expected 26:4 expedite 92:17 experience 9:20 72:16 74:2 78:6 78:22,22 131:16 131:20 175:19 experiences 158:19 expert 170:9 expires 190:14
--	---	--	---	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 201

193:11 explain 39:8 100:6 explanation 49:25 exposure 110:13,22 111:9 expression 92:6 extremely 65:5 67:4 92:5 eyes 39:23 41:4 92:12	107:8 113:4 fanning 37:9 far 16:8 18:20 28:18 31:22 32:13 73:7 76:7 91:20 99:20 122:23 168:2 fast 72:17 131:7 Fatima 121:18 122:7,7 fault 173:6 FAVOR 192:1,7,13 fear 65:7 feasible 116:9 February 8:3 14:24 143:13 federal 148:21 feel 139:1 feet 51:7,9 64:3 117:1 fell 120:8 fellow 129:10 137:10 felt 172:3 Female 60:12 females 143:21 Fenn 24:8 Ferguson 8:10 10:17 11:7,14 12:23 15:22 17:20 18:1 19:9 26:16 26:25 27:10,16 28:23,25 29:1,3 30:12 32:10 48:18 55:2 61:7 62:1,8 63:18 71:5 76:25 83:13 87:14 88:23 97:11 99:12,25 100:14 102:13 108:15 112:19 142:10 143:9,15 146:11 147:13 153:6 154:19 161:9 170:6	173:13 field 16:24 17:6 18:3 37:23 fight 102:16 108:8 139:8,9 143:24 fighting 143:21,23 146:17 file 24:21 97:7,8 140:12,14,19 fill 19:3 105:1 filled 102:6 118:23 118:25 119:2 179:7 filling 104:24 170:2 178:3 final 105:19,21 finally 155:11 find 22:10 37:9 86:4 fine 16:13 113:6 136:25 176:16 finish 45:16 finished 97:5 125:3 finishing 52:5,10 52:12 122:10 fire 12:11 59:21 firearm 10:24 11:1 41:23 134:8 firearms 11:10 12:4 22:17 27:5 59:11 134:6 135:7 firing 182:6 firm 6:3 9:2 163:5 191:14 firmly 162:24 first 6:23 8:1 14:15 16:3 24:6 34:17 38:7 44:11,12,12 47:2 51:22 57:1 60:15 62:15 64:18 65:4 66:2 67:20 68:8,23 69:21 78:9 87:6 90:6 99:9,11 100:17	115:1 116:18 123:18 129:11 144:14 151:22 167:16 176:25 179:19 183:19 185:15 fist 102:16 108:8 fists 58:1 five 19:23 114:21 115:2,5,5 120:10 141:8 181:10 Five-foot-eleven 85:3 five-second 64:11 77:3 114:19,24 120:13 181:12 floor 167:20 fluid 78:15 132:23 focus 143:4 folder 30:16 follow 96:8 164:9 179:22,22 follow-up 173:12 followed 100:11 102:18 121:23 172:12 following 181:16 follows 7:1 force 10:10,11 13:10,14,24 18:20 19:7 28:5 41:18 42:18 43:2 55:2 58:22 63:23 65:21 69:2 70:3,10,21 70:25 71:15,16,19 72:5 74:16,25 75:7 76:8,18,24 77:18 78:7,8 80:20 82:16 86:11 87:14 96:15 99:8 99:16,22 100:8 101:2 102:12,18 102:19 103:4,16 103:17 104:9,23	104:25 105:2,14 116:16 120:3 129:11,13 133:4 135:7,21,25 136:6 136:7 137:14,16 138:14 139:13 143:8,17 145:10 146:8,11,16 147:13 149:13 150:15 153:6,11 154:15 155:1 156:21,23 162:17 162:22 163:16 166:12,18,22 167:5 169:16,18 169:22 170:5,22 170:23 171:5,12 171:14,18,25 172:4 178:21 179:8,12,17 180:15 181:1 182:2 forced 155:9 foregoing 185:18 185:21 190:2 forehead 155:16 foreseeability 158:20 forget 29:18 forgive 14:16,25 38:13 125:5 forgot 25:18 133:18 form 11:20 47:21 56:23 58:25 59:13 59:23 65:9 66:4 66:15 67:5,7 68:1 68:10 70:14 71:8 71:15,21 72:9 73:11,19 75:1 76:4,19 77:12,20 77:22 78:13 79:6 79:14 80:16 81:21 82:11,20 84:4 85:12,19 100:17
--	--	--	---	--

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 202

111:10 113:13 120:20 129:14,24 131:10 132:1,9,16 132:18,25 133:6,9 134:13,25 135:12 135:22 136:3,13 144:24 152:16 162:18 163:3 170:3 172:25 175:24 176:2 179:15 181:4,20 183:3 formal 29:25 178:20 180:8 formally 29:23 110:25 former 10:20 forms 97:10 144:16 forth 185:22 forward 102:22 145:19 forwarded 171:8 180:3 forwards 103:18 found 37:13 105:13 140:23 168:6 173:2,6 foundation 21:8 32:15 47:22 56:24 59:1,24 60:4 61:21 65:10 66:5 69:4 70:4 73:20 76:5 82:21 83:4 104:11 111:11 129:15,25 133:9 134:14,25 135:12 135:22 136:3,13 148:23 160:24 161:19 172:25 173:16 176:3,21 179:3 181:5,20 183:3 four 11:16 20:4,8 36:17	Fourth 2:22 6:3 185:10 187:4 192:10 frame 31:6 48:5 130:9 160:2 free 73:9 fresh 131:18 Friday 48:25 Friend 1:5 2:9 friendlier 14:9 front 37:3 53:5,16 53:17,24 54:15 126:5,12 127:1,12 129:1 153:13 full 115:25 185:25 fully 155:12 functional 35:14 functioning 122:24 further 9:18 31:19 66:13,22 81:10 102:21 120:20 138:7 140:24 146:24 150:24 153:23 155:11 163:24,25 164:3 172:16 173:9 179:1 184:5 186:5 187:15 <hr/> G <hr/> G 122:2 gain 64:19 116:4,19 147:2 157:10 gas 35:15,19 GATEWAY 193:5 gathering 140:13 general 12:4,10 18:20 19:10 21:11 21:14 22:3 26:3 28:23,25 29:6 30:12 31:17 32:9 62:14 82:25 100:21 102:13 103:11 161:25	171:3 generally 21:24 24:2 47:23,25 78:11 95:14 149:17 genitalia 60:11 gentleman 36:19 79:1 91:21 153:3 182:25 getting 40:23 73:7 84:6 120:12 give 13:13 14:1 16:9 24:19 26:3 42:15 62:11 80:14 129:17 131:20 142:22,23,24 145:9 146:10 147:11 150:20 153:5 154:14 156:19 given 22:14 28:8 61:4 79:12 120:12 123:25 141:16 149:12 155:7 157:17 186:2 190:5 gives 17:15 giving 165:9 Glock 27:7 go 7:13 9:11 11:5 12:23 17:3 23:25 24:18 25:10 28:13 30:7,23 31:24 35:17,25 37:7 53:22 55:1 63:23 68:3 74:12 76:7 76:10,23 80:12,18 99:11 100:13,15 100:22 102:22,25 103:4 108:14 116:2,3 122:17 127:25 139:15 148:10,17,18,22 151:3 158:12	161:13 163:18 168:9,18 176:18 178:25 180:5 goal 15:7 130:14,19 God 122:14 goes 17:3 29:7 30:21 49:7 79:25 97:17 111:4 145:16 going 7:8 9:6 10:2 12:5,6,7,10,12 13:20 14:19 17:9 21:12 25:23 32:7 33:23 35:11 36:16 37:22 39:14 42:15 48:4,5 50:14 53:1 54:2,9 62:11 67:3 72:17 75:1 79:21 85:10 88:2 99:11 119:23 129:17 130:4 131:20 132:10,11,12,12 139:19 140:8 141:25 143:1,4,24 144:13 148:17,18 151:19 155:5 160:11 161:12 166:17 167:4,24 170:21 171:2 174:8 175:19,20 179:14 180:16,24 182:13 good 7:5 18:13 48:3 122:14 134:19 139:5 161:5 Gore 4:3 6:11 193:5 GorePerry 187:1 187:23 gotten 113:3 grabbed 153:19 great 122:14 greater 74:23 160:15	grill 53:16,18 Groaning 39:6 groin 67:19 69:20 115:15 117:6 ground 51:1,2 57:16 64:2,12 65:2 66:11,23 67:16 69:13,17,19 69:24 72:4 73:1 73:17 76:11 77:4 77:11 79:2,4 80:8 80:8 81:16 92:11 94:9 115:16 120:8 146:19 153:21 155:9,11 183:16 183:19 growl 39:11 growling 39:5,7 guess 14:8 16:6,7 20:19 26:7 33:4 36:16 49:8 51:25 88:2 92:9 97:17 101:20 103:6 106:13 117:15 130:4 139:5 guessed 119:22 guessing 33:1 87:24 115:7 guidelines 151:5 169:23 172:13 guilty 129:12 gun 56:12 80:5,11 80:13,14 108:10 115:9,19 116:6 169:5 gurney 94:2,4 guttural 39:9 guy 69:7,9 79:24,25 80:7 84:23 guy's 69:13 80:5 guys 21:2 85:16 86:7 108:23 <hr/> H <hr/>
---	---	---	--	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 203

half 63:6	health 56:22 111:7	54:16,21 97:25	187:9	95:20 96:1,4
hallucinating 160:3	130:23 138:15	hereinabove 190:6	idea 21:10,15,19	101:2 104:5
hand 50:14 115:22	158:23	hereto 190:4	23:22 25:1 26:3	107:13 109:13
150:22 167:4	hear 36:23 37:6	hereunto 193:8	43:21 48:3 55:13	112:16 122:15
186:9 193:10	95:20,23 124:17	hesitate 80:3	57:10,13 103:21	143:12 146:24
handcuff 85:17	156:6 161:4	hesitated 82:17	104:14 127:17	148:19 150:25
121:6 157:5	heard 22:12 34:18	hide 127:13	141:24 161:25	154:23 169:17
handcuffed 38:22	36:9,10,20 37:12	high 7:20 59:20	180:16	177:2
39:19,21 83:15	37:16 44:18,19	65:17	iden 47:13	incidents 102:16
86:15,24 150:24	45:9 46:21,24	higher 173:4	identification 95:5	105:2
181:15	55:16,19 78:1	highlighted 143:3	identified 47:3	include 11:18 12:15
handcuffing 52:6,9	89:9,10,12,15,19	highlights 143:1	identify 6:13	included 119:4
90:14 155:10,12	90:15 105:13,17	hired 143:11	161:10	includes 12:4
handcuffs 74:13	106:9 107:10,12	his/her 187:10	imagine 87:24	including 65:20
84:18 85:23 90:18	112:15 122:13	hit 59:21 76:9	92:10 152:21	156:23 187:12
91:3,6,15	123:18,18 159:21	80:12 183:19	immediately 30:13	indecent 110:13,22
handed 139:20	173:4	hits 79:24	56:20 80:12 81:19	111:9
handle 130:22	hearing 37:15	hitting 69:10	82:9 85:10 180:2	INDEX 5:1
131:21 139:2	44:21 160:3	hold 54:2 121:5	imperfect 86:8	indicate 45:11,18
handout 61:15 62:6	hears 81:4	174:8	implementation	51:14 64:23
handouts 25:4,5	hearsay 149:1,6	holds 163:6	61:20	145:13 148:4
hands 41:19 55:4	heart 76:2,3 82:25	Holm 3:13 192:15	importance 132:21	155:19,22 179:10
55:12 84:2 146:20	83:3 94:8 160:8	home 107:20,24	134:4	indicated 54:13
146:21 150:20	160:19,22 161:6	108:11	important 9:8 17:5	65:7 66:1 113:14
162:23,24 163:5	heavier 113:18	honest 40:15	131:24 138:13	115:8
hands-on 71:15,16	heavy 48:2,8 50:1,5	159:19	impression 175:1	indicates 65:1 77:9
handwriting	113:14 131:7	honestly 72:12	impulses 160:5	114:8 118:9
110:14 154:1	heel 150:21	hoodies 113:19	in-between 93:19	144:24 147:16
happen 35:20 92:1	Height 112:10	hopefully 44:10	182:8	154:7 155:15
happened 34:10	heightened 134:8	130:22	in-custody 160:15	156:22
38:15 94:11,11,13	help 17:15,17 72:19	hopes 163:15	in-house 22:12,15	indication 66:18
95:15 103:12	130:22 145:23	Horton 144:6	25:13 26:24 28:1	153:13
104:20,21 114:3	helping 135:8	hospital 93:10 96:8	28:3	individual 79:21
146:7 176:15,15	161:10	106:14 109:8	in-service 26:5	Individually 1:1
happening 72:13	helps 17:14	119:23	inaccurate 112:4	2:5
happens 19:13	Henke 31:2 33:4	hour 48:12 49:24	inaccurately 9:21	individuals 27:25
hard 39:8 86:5	95:25 97:16 103:8	hours 24:23	inappropriate	information 44:13
hard-nosed 14:10	103:14 104:1,3,25	hundred 22:3	105:14	47:8 55:8 57:7,20
head 40:5 51:5,6	106:4,21 165:16	31:17,18 51:10	incapacitate 68:14	58:5,16,19 64:14
55:4,12 61:19	165:22	85:4	inch 113:24,24	77:6 83:18 96:14
76:10,11 91:10	Henke's 104:8	hurt 74:7,8 148:5	inches 117:6	112:8,11 113:3
95:21 169:8	105:18 165:17		incident 7:9,9 10:8	114:11 116:25
headlights 125:11	Henquin 38:9,10	I	34:10 40:21 41:12	124:1,10,14
125:12,15,20	46:14 48:23 49:12	Ida 3:20 6:19 187:3	63:6,13 93:23	140:13 149:22

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 204

150:6 181:9 initial 14:19,23 73:15 120:9 173:3 initially 64:2 initials 50:20 52:24 53:2 initiative 165:6 injured 55:20 74:6 101:3,5,13,14,18 101:25 144:17,25 145:6,14 146:5 147:6,9,25 151:18 152:15,25 153:14 154:8,11 157:21 injuries 87:18 101:8 119:13 151:10 injury 101:9 118:18,20 119:4 119:12,17 137:22 138:10 144:8 145:2 146:7 148:7 148:8 151:6,14 152:5,11,22 155:20,23 157:19 157:24,24 158:8 inquire 141:11 163:25 164:3 inside 30:16 insights 131:20 instance 127:16 158:1 168:7 instantaneous 78:16 instituted 16:3 instruct 187:12 instructor 7:22 60:22 142:7 instructors 61:10 62:2 intelligent 131:8 intend 180:13 interested 186:7 International 61:1	61:13 62:3 108:20 interrogatories 7:1 interrogatory 170:10 interrupted 102:9 interval 78:1 intervals 182:8 intervention 15:5 17:7 interview 99:3,5 interviewed 104:1 interviews 104:6 intoxicated 153:18 introduced 169:4 investigate 173:5 investigated 173:6 investigation 22:25 97:12 102:20,21 180:3 investigations 22:24 172:17 investigative 97:7 invite 20:24 invited 20:17 involved 32:17,18 32:24 76:12 105:25 108:10 132:23 involvement 7:10 17:19 18:17 99:1 106:1,8 involves 101:2 involving 8:13 107:13 169:17 irate 145:17 Island 7:22 issue 17:9 168:24 169:1 172:21 issued 29:7 30:6 60:19 issues 27:2 56:22 79:11 111:7 130:23 138:15,24 158:23	J Jackson 10:20 Jackson's 130:3 137:6 164:25 jail 8:14 139:7 177:15 January 14:24 15:1 153:8 Jason 1:3 2:7 7:7 35:25 36:19 47:4 50:16 92:3 103:4 106:7 112:15 Jason's 107:5 jerk 145:19 Jesus 122:14 job 63:18 86:7 95:1 Join 170:13 173:1 joining 21:7 judge 9:14 Julie 2:24 6:10,20 185:4 186:17 July 21:17 143:16 jump 23:5 44:3 139:3 jumped 93:24 June 62:20 145:11 juror 9:15 jury 7:13 13:6 115:16	66:2 69:23 70:9 71:7,25 73:15 77:7 80:25 81:4,7 81:11 82:7,9,13 83:19 85:1,10 96:13 99:4,13 104:2,9 108:22 113:12 114:12 116:16 117:3,8 118:6 121:23 122:12 156:4 168:12,14,21 171:22 172:3,12 172:22 174:9 176:10,19 177:1,2 177:19 178:1,21 181:9 182:3 183:1 187:7 191:5 Kaminski's 40:11 53:5 64:25 71:4 79:18 98:3 107:20 109:1 121:3 123:18,19 128:3 128:20 168:7,13 169:22 170:4 177:11 Kansas 3:15 192:17 keep 11:11 24:21 69:10,11 97:6 127:12 keeping 73:17 155:10 kept 23:19 27:22 40:3 149:17 165:24 keys 80:8 kick 145:21 kicked 145:18 157:7,8,9 kicking 145:20 killed 146:5 147:9 151:18 152:5 154:11 kind 22:18 24:11	28:7 29:4 32:6 39:8 40:18 45:14 45:20 72:4 86:5 112:10 kinds 23:9 knee 153:2 knees 101:22 knew 41:17 82:8,13 82:18 104:5 140:17 180:11 181:17 know 7:6 8:20 9:4 10:16 13:10 14:5 14:7 15:13 16:9 16:15 17:3,12,16 19:13 20:21,23 21:5,14 22:11 23:16,20 24:19 25:8,14,20 26:8 28:10,11,18 29:16 29:17,17,19 30:16 31:3,11,12,13 32:1,17 33:20,22 35:9,22 37:7 39:11,20 40:4,6 40:15,21,24 41:3 41:4,6,10 42:5 43:19,25 46:8,18 48:3,4 49:6 52:18 53:19 55:11 56:4 60:6,10,19 61:17 62:4 68:24 72:12 72:17 74:8 75:20 77:25 78:2,21 79:17,20 82:24 83:2,6 85:3,25 87:21 88:6 89:5 91:10 94:7 95:11 96:1,25 99:7 103:15 104:20 105:8 106:22,24 112:19 113:19,25 114:3,6 115:13,22 115:24 117:8,9,20
--	--	---	---	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 205

117:23 118:14,24 119:5,20 124:12 126:11 128:9,10 128:12 129:7 139:2,6,8 140:15 141:7,8,12,22 144:10 160:2,7,9 160:11 161:24 164:19 165:25 166:7 167:8,18,19 168:3 169:10 172:15 175:5,20 176:9,24 177:5,9 177:17 178:11 knowing 84:21 138:20 175:4 knowledge 7:9 8:19 26:22 36:1 40:17 42:2,5 45:24 83:7 87:7 90:9 94:18 96:12 97:9,14 103:11,13 106:7 116:9 119:6 121:10 142:17 150:12 154:20 178:10 known 38:2 79:10 166:1 knows 30:22 81:2,4 81:5,6 85:10 166:10	103:17,18 lawfulness 104:8 laws 25:6 lawsuit 133:13 lawyers 140:13 layed 120:11 layers 113:20 laying 38:22 80:7 117:25 lead 61:19 94:7 leads 94:16 learn 36:18 106:11 132:15 learned 36:19 58:6 108:2 180:19 leave 47:11 97:13 105:4,9 172:17 178:7 leaving 35:25 42:13 left 63:10 76:25 93:9 96:5 105:11 172:14 left-hand 63:2 Legal 6:9 let's 17:19 53:13 99:9 100:13 120:5 122:17 126:9 139:15 158:12 163:18 level 78:19 80:6 104:23 levels 102:19 131:15 liability 169:4 lies 15:8 lieutenant 6:5 7:5 17:20 18:15,18,22 18:24 20:22 26:11 26:17,18 29:14 33:5,9 48:22 50:25,25 106:18 122:23 123:10 137:2 140:15 141:16 142:25	149:13 158:18 163:23 165:11 168:14 171:22 173:12 174:21 lieutenants 19:20 20:10,16,21 21:6 26:15 Life 154:6 lift 94:4 lighting 125:16 lights 35:9 124:21 124:23 125:9,25 126:2,4 line 53:4,15,17,23 113:6 126:12 170:5 187:13 188:1,4,7,10,13 188:16,19,22 189:1,4,7,10,13 189:16,19,22 lines 116:25 123:20 LIPA 193:5 lips 91:21 list 31:12 187:12 listened 43:16 listening 133:18,20 litigation 150:3 little 49:10 53:23 95:8 108:25 113:24 142:15 169:12 180:23 load 94:22 loaded 35:4,7 loading 35:12 locate 46:4,8 95:11 95:12 located 50:8 locating 46:13 location 26:24 37:15 124:3 locations 37:3 lock 70:21,21 73:16 73:17 locks 41:19,20	71:16 163:6 log 25:9 30:13 logged 114:5 long 8:23 15:22 18:14 36:14 39:20 64:23 79:9 82:3 longer 53:23 54:4 66:8 67:17 69:13 79:4 80:14 82:17 163:10 173:20 look 35:25 42:8,19 42:25 77:16 100:10 102:15,17 133:3 142:23 143:19 144:6 146:12 147:24 150:8,18 151:21 151:21 153:16 155:3 160:9 looked 35:13 39:13 40:2 90:4 142:14 142:15 175:9 looking 14:6 22:2,4 36:6 51:25 52:1 55:15 62:24 72:11 75:25 95:19 166:14,24 169:9 looks 42:20 122:1 127:7 144:6 147:24 lost 135:8 lot 48:15 49:1 53:14 75:18,22 126:4,20 128:9 168:8 lots 140:12 loud 9:10 Louis 2:23 3:7,23 4:5 6:4,12 15:10 24:18 28:13,21,22 185:11 187:5,24 191:19 192:5,11 193:7 lower 63:2,9	lowing 73:8 LSU 153:22 154:3 LSV 154:3,5 <hr/> M <hr/> M-u-d-d 123:10 ma'am 148:12 167:2 mace 42:1,12 70:22 71:4,6,24 72:21 74:16 147:16 156:23 166:23 168:3,13,15,15,21 173:15 174:10 176:20 177:12 maced 148:1 make 95:8 mad 160:10 Madison 3:14 192:16 mailbox 62:6 63:20 making 106:22 171:13 male 132:13 146:17 man 7:16 34:19 46:22 56:11 58:22 67:1 72:3 77:10 81:16 84:19 108:2 181:10 183:15 managing 162:8 maneuvers 71:15 manner 14:9 manual 133:3,4 March 8:3 Marguerite 124:3 marines 7:21 mark 120:22 marked 42:15 50:14 141:17 156:19 marking 154:14 marks 92:7 mass 12:12,14,20 59:11,22
---	---	---	--	--

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 206

match 100:9,22 102:16 108:8 materials 24:6,12 24:24 25:3 matter 42:17 180:14 187:10 mean 9:1,2 35:6 41:1 48:10 52:16 60:3 75:16 76:12 78:3 81:8 85:25 93:19 97:24 108:7 109:16 110:17 113:7 121:17 123:2 126:2 131:13,14 138:23 139:8 150:7 152:25 162:22 176:12 meaning 139:22 179:7 meant 163:11 measure 32:12 117:12 medical 76:7 83:7 88:9 93:3 119:5,6 160:12,14 172:16 meeting 19:12,14 34:24 107:16 164:11,13 meetings 19:6,16 20:9,11,17,24 21:6,7,22,25 member 9:19 107:8 members 46:25 56:1 138:23 158:22 MEMO 191:1 memory 12:19 59:19 men 19:1 mental 17:9,12 45:20 56:22 79:11 111:7 130:23 138:15,24 158:23	159:2 mention 37:25 151:14 mentioned 23:7 44:13 76:18 190:6 met 7:6 46:22 64:5 131:5 microphone 12:15 45:3 middle 14:17 50:12 52:8 155:3,6 midnights 21:3 military 7:21 65:16 mind 23:5 48:5 127:3 133:21 159:13,17 160:2 185:14 mindset 79:18 Mine 127:20 minimum 11:8,14 14:20 24:23 Minor 1:5 2:9 minutes 36:7,17 106:14 mischaracterizes 151:24 misdemeanor 111:21 misinformed 114:23 Missouri 2:2,23 6:4 6:8,13 185:1,7,11 186:9 193:7 misstates 173:23 mistake 176:13 MO 2:25 3:7,15,23 4:5 186:18 187:5 187:24 191:19 192:5,11,17 models 22:22 23:12 modified 30:6 31:21 modules 28:3 Molly 3:12 6:17	moment 68:2,5 72:13 138:18 141:20 monitor 94:8,8 137:7 month 19:14 25:16 60:17 monthly 29:4 months 13:2 41:9 41:11 62:21 63:6 63:6,12 178:12 Moore 1:1,3,4 2:5,7 2:8 6:6,16,18 7:7 7:7 10:8 35:25 36:20 37:10 38:12 38:17,18 39:14 47:4 49:19 50:8 50:16 51:16 55:4 55:16 57:5,10,15 57:16,24,25 58:10 59:10 63:7 64:2 64:12 65:1,5,25 66:25 69:17,19 71:6 77:2,4 84:18 86:15 88:25,25 89:10,14,25 90:18 91:20 92:3,3,25 93:9 94:15 95:3 95:12 101:16 106:11,15 107:2,5 107:8,13 111:7 112:15,18 118:24 122:13 125:20 154:23 156:5,5 164:13,14,20 169:17 187:7 191:5 Moore's 39:23 83:14 84:1 103:4 106:8 107:13 115:15 164:21 morning 7:5,6 33:13 34:7 48:13 48:24 49:4,23	50:1,3 104:4 112:3 116:17 mornings 50:2 mother 107:5 mouth 91:11 move 57:5 82:2 108:25 143:6 moving 37:15 86:15 130:12 Mudd 123:10 Mullen 153:20 multiple 25:24 municipalities 15:14 muscle 12:19 59:19 73:4 muscles 68:14 73:3 75:21 muster 22:16,19 25:13 27:18 34:15 34:21 36:4,10 44:15 <hr/> N <hr/> N-a-b-d-z-y-k 26:14 Nabdyk 26:11,18 33:5 naked 34:19 38:5 47:5,14 56:11 81:18 110:9 113:15 120:7 181:10 183:16 name 6:9,15 7:5,14 140:14,15,17,21 191:14 named 109:1 names 17:3 narrative 43:5,8 143:20 152:10 156:10 nature 109:13 179:13 near 48:22 76:2	128:23 149:21 nearby 80:5 necessarily 59:17 99:3 necessary 139:13 179:1 neck 145:19 need 11:12 31:12 35:11 125:15 139:10 141:3 155:25 157:25 169:10 needed 20:20 22:4 128:16 needs 139:1 negative 180:24 neighborhood 30:17 95:16 neighbors 56:1,5,9 neither 157:21 neutral 110:4 never 20:24 42:22 63:20 75:18 93:18 94:5,13,21 105:13 105:17 109:21 110:25 112:17 116:13 121:24 141:6 156:15 173:3 182:15,21 new 30:5,20 31:21 98:17 nice 163:10 night 140:20 177:21 noise 90:3 non-criminal 110:5 non-lethal 70:25 74:16 143:8 145:10 146:11 Non-police 121:17 non-threatening 129:21 noncompliance 64:5
--	---	--	---	--

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 207

normal 96:6 193:3	79:14 80:16 81:21	175:5,22 176:11	95:11 96:7,13	169:9 183:20
normally 44:2,5,6	82:11,20 83:4	176:12	97:13,20 98:2,2	officers 11:7 12:18
96:10 170:21	84:4 85:12 104:11	occur 41:7	99:1 102:18 104:2	12:23 15:6,13
north 3:6 49:16,19	111:10 129:14,24	occurred 93:1	104:2,9,10 106:15	16:23,24 17:6,14
191:18 192:4	131:10 132:1	occurring 106:7	107:19 108:22	24:21 25:23 28:6
Nos 1:9 2:12	134:13 144:13	occurs 22:18	109:1,2 112:1	28:23 29:5 30:25
nose 153:21	151:19 152:16	October 146:12	113:11 114:12	31:12,20 32:8
Notary 190:18	160:24 161:19	186:10 187:2	116:16 117:3,8	34:1 35:24 36:4
193:13	162:18 163:17	odd 48:11	118:6 120:6 121:3	36:21 37:9,16
noted 108:22	173:16 175:24	off-site 27:12	121:17,22 122:12	41:25 42:4,11
139:25	176:2,21 179:3	office 24:3 103:5,19	123:1 124:13	45:1 46:18 61:1,9
notes 96:19 97:2,6	181:4 182:13	104:14 131:14	126:10 127:15,17	64:25 72:6 74:7
notice 39:25 91:19	objected 133:22	187:15	128:3,19 129:10	79:19 84:11,17
144:15 185:5	objection 59:7	officer 8:2,15 10:19	129:11,12,22	85:8 88:25 89:25
noticed 90:4,6	67:15 73:23 75:8	10:20 13:15,17	130:5,9,20 132:8	90:11,14 93:4,19
91:23	84:13 133:14,25	14:18 16:15,16	134:7 139:1 142:8	95:4,16 99:13
notified 106:19	136:10 161:4	18:4 26:5 29:8	142:25 144:5,8,16	108:5 117:18,19
notifies 97:17	168:17 170:8,13	30:21 34:22 35:18	144:25 145:1,14	118:14 122:24
notify 45:22 97:14	172:25 176:6	36:11 37:12 38:4	146:1,7 147:2,6	129:19 131:1,6,24
106:20,24	183:10	38:11,11,13,15	148:4,7 150:20	132:12,13,22
notifying 95:25	objections 136:14	39:12,12,13,15	151:4,14 152:4,11	134:22,22 135:10
number 50:15 51:2	149:7 168:22	40:10,17,20 42:10	152:13,25 153:1	135:11,17,20
51:14,18 53:16,20	177:25 183:21	42:11 45:3 46:13	153:11,14,18,20	136:2,9 137:3,9
54:13 95:6 109:5	184:2 185:24	47:9 48:21 51:15	154:8 155:1,19	137:10,13,17,18
114:9 126:23,24	observations 121:2	51:18,21,23,24	156:4,23 157:1,2	137:25 138:4,13
126:25 127:4,5,24	156:4	52:4,13,19 53:5	157:3,3,4,7,8,9,10	146:18 150:5
128:1,19,23	observe 94:6 95:20	55:3,9 56:13 57:5	157:21,24 158:21	156:6 158:4,21
142:13 160:4	101:13	57:7,15,21,23,25	160:9 161:10	161:13 162:3
187:13	observed 51:22	58:6,8,15 59:9	162:7 164:25	165:6,12,19 167:8
Numerous 89:8	91:17 92:3,24	60:21,22 61:15,16	165:8,23 166:2	167:12 168:8
Numrich 3:13	94:21 112:9	61:16,17,25 62:7	167:22,24 168:2,6	169:12 172:1
192:15	117:15	64:3,6,10,15 65:7	168:11,13,14,21	173:14,18 178:7
O	observing 92:2	66:2 67:23 69:2	169:2,3,22 170:4	offices 2:21 185:9
object 11:20 21:8	obtained 143:15	69:23 70:2,8 71:3	171:22 172:3,12	official 8:5 178:24
32:15 45:13 47:21	obvious 151:10	71:7,25 73:15,18	172:21 174:8,14	oh 19:17 20:4 41:9
56:23 58:25 59:13	obviously 9:7,13,19	74:6,20 76:17	175:2 176:9,10,19	84:15,17 92:8
59:23 60:4 61:21	13:15 112:9 134:7	77:7 78:6 79:18	176:25 177:1,2,10	96:7 98:20 109:11
65:9 66:4,15 67:5	162:19	79:21,24 80:25	177:19,25 178:21	134:2
67:7 68:10 69:4	OC 40:21,22,25	81:1,11,11,19	178:21 179:16,17	okay 7:18 8:1,7,9
70:4,14 71:8,21	41:8 71:6 74:25	82:4,7,8,13 83:13	181:9,24 182:2,3	8:18,21,23 9:18
72:9 73:11,19	143:25,25 145:23	83:19,19,25 84:6	183:1 191:8	10:1,6,18 11:9,13
75:1 76:4,19	146:23 157:10,12	84:20,22 85:1,9	officer's 53:19	11:18 12:1,3,17
77:12 78:13 79:6	157:18 166:22	86:9,16,21 87:1	74:20 102:12	13:13,22 14:1,11
	168:9,10,13 175:2	88:7 90:5,13,17	105:5 153:19,24	14:18 15:1,4,25

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 208

16:5 17:25 18:10 18:13,17 19:15 20:6,12 21:11,20 22:11 23:3,6,23 24:1,11,17,24 25:2,12,22 26:8 27:9,18 28:1,12 29:4,13,22,25 30:5,19 31:19 33:12,17 34:6,14 34:17,21,24 35:2 35:6,13,23 36:8 36:14 37:11 38:2 38:24 39:22 40:6 41:13 42:9,23 43:4,10,23 44:23 45:2,8,11 46:5 47:2 48:7,14 49:2 49:15 50:8 51:11 52:2,4,10 53:7,13 54:20 55:1 56:4 56:19 60:2,9,23 61:6 62:23 63:5 63:22 64:22 65:20 66:22 67:3 69:16 71:24 72:21,23 73:6 74:1,22 77:9 77:24 78:11,18,21 79:23 80:19,22 81:5 82:15 83:2,8 84:19,23 89:9,13 89:15,23 90:6,11 91:8,12,19 92:7 92:15 93:11,15 94:6 95:14,22 96:3,9,13,19,24 97:4,10,19 98:7 98:12,19,24 99:8 100:5,17,21 101:1 101:16 102:6 103:3,9,20 104:16 105:7,10,23 106:4 107:2,4,7,23 108:1,4,14,21	109:22,25 110:12 110:19 112:2,13 112:19 113:6,13 113:22 114:6,16 115:8 116:5,15 117:18,20 118:5,9 118:17,23 119:8 119:11 120:17 122:1,17 123:5,8 123:12,17 124:2,7 125:3,7,11,14,23 126:6,9,21 127:23 128:11 129:9,17 130:8,13,19 133:21 134:19 136:15,25 138:17 139:15 142:7,11 142:16 143:5,12 144:8,11 145:3 146:1,16 147:2,16 148:7 149:3,9 151:9,23,25 152:25 154:5,7,25 158:12 159:12,16 159:20 160:13,21 162:3 163:18 164:19,23 165:14 166:1 167:8 168:2 168:5,11 169:15 170:1 171:11 172:7,24 173:8 174:2,4,7,17 176:14 177:4,12 177:16 178:5 180:8,18,23 181:7 182:11 183:6,14 184:4 old 7:16,17 40:22 142:14,15 Olive 4:4 6:12 187:24 193:6 on-scene 108:21 on-the-spot 69:3 once 8:8 29:7 31:25	49:5,7 60:20 69:9 74:11 87:15 95:2 104:15 106:19 145:15,17 150:22 163:5,9,9 one's 100:18 132:11 143:1 ones 149:16 ongoing 29:23 32:14 open 39:23 150:21 172:14,17 operated 113:9 operations 32:19 opinion 17:5 56:19 76:14 85:16 170:4 171:14 179:11 180:14 181:7 182:1,23 opinions 180:19 opportunity 181:11 181:13,14 opposed 50:1 option 41:18 options 109:25 oral 7:1 order 29:7 30:6,6 76:15 92:19 170:10 ordered 64:4 145:20 187:11 ordering 57:24 orders 19:10 22:3 28:23,25 29:6 30:12 31:17 32:9 56:21 58:23 102:13 171:4 ordinance 110:19 110:23 111:21 ordinary 63:17 149:18 original 63:19 191:15 192:1 originally 37:3	110:7 160:9 Otto 3:13 outfit 167:17 outside 27:10 94:14 overheads 126:8 <hr/> P <hr/> P.C 3:21 package 29:18 pads 94:7 page 5:2 43:4 62:13 64:1 100:13 102:4 102:10 108:15 119:25 122:2 141:20 144:14 146:12 147:24 151:22 153:14,16 187:12,12,13,15 188:1,4,7,10,13 188:16,19,22 189:1,4,7,10,13 189:16,19,22 pages 43:1 88:22 185:21 paid 193:2,3 pain 116:19 palm 150:21 paper 95:8 paperwork 35:9 104:7 paragraph 44:11 44:12 47:2 paragraphs 99:10 99:12 paramedic 93:7 paramedics 151:9 paren 110:13,13 120:10,10 parentheses 120:7 120:8 143:22,23 150:21,22 parked 53:10 125:9 126:5 127:19,19 parking 44:7 53:14	126:3 128:9 Parris 7:22 part 17:1 47:17 54:3 59:25 60:8 60:13 63:19 85:15 87:22,25 95:1 96:10 109:23 136:8 137:7 143:20 155:6 171:1 180:5 particular 40:14 particularly 138:12 parties 186:6,7 passed 36:3,9 40:7 106:16 Patel 109:9 patrol 21:16 31:10 31:11 32:19 33:25 35:3,5,24 53:5 54:12 103:10 121:9 125:24 130:10,20 137:3 145:17 157:5 165:1,8 patrolman 18:4 patrolmen 78:23 pavement 40:3 pay 108:11 payroll 19:2 PC 2:22 3:13 185:10 192:15 peace 8:2 peacefully 13:9 pedestrian 14:5 pending 6:7 8:18 185:5 penetrated 118:10 penetration 113:21 people 13:12 16:1 17:11 85:23 86:10 89:6 94:4 115:25 124:15 135:8,10 137:25 138:4,8,14 138:25 139:7
---	--	---	---	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 209

158:20 159:1,2,6 159:9 160:13 161:10 pepper 40:19 147:16 157:10 166:23 169:13 percent 51:10 perfect 85:22 86:1 93:20 127:2 perfectly 58:23 perform 42:13 93:11 period 24:22 55:5 57:17 58:2,11 64:5,12 77:4 83:15 86:17 87:3 89:2 90:20 120:8 120:9,12,24 143:21,25 144:1,2 145:18,20,20,22 146:18,22,24 150:23,25 153:20 153:22,25 155:12 permissible 71:12 71:14 perpendicular 128:4 Perry 4:2,3 6:9,11 193:5 person 13:19 14:6,8 17:15 25:8 45:12 46:4,8 56:21 68:15 74:24 75:6 76:16 79:9 94:2 96:4 106:23,23 108:7 109:14,18 110:8 130:23 131:2 132:13 135:9 138:18 139:9 150:15 151:17 152:3,23 153:17 154:10 160:1,8,10 161:16 162:6,8,13 191:14	person's 79:17 160:23 personal 1:2 2:6 45:12,19 46:2 56:21 70:22 71:4 79:11 111:8 138:1 138:5,9,15 142:2 171:13 personally 14:22 personnel 22:5 88:9 persons 55:20 150:11 pertaining 23:17 25:6 phase 163:1 phone 24:5 95:25 104:4 phrase 22:12 48:7 78:1 89:15 156:6 156:13 physical 26:24 27:11 82:2 150:14 153:11 155:1 156:22 163:14 167:5 physically 93:23 157:12 pick 24:5 picking 93:16 picks 49:7,10 picture 53:8 126:13 pictures 94:15 Pillarick 151:4 pin 157:4 pistol 27:7 Pitzer 2:22 3:21 6:3 185:9 187:4 192:9 place 15:9 46:7 55:4 68:23 145:1 placed 64:12 146:23 placing 77:4 Plaintiff 139:20 Plaintiff's 5:8,9,10	5:11,12,13,14,15 5:16,17,18,19,20 5:21 139:21 141:17 Plaintiffs 1:7 2:10 2:21 3:3,11 140:5 plant 49:12 platoon 18:25 178:12,15 play 108:10 please 6:14,21 7:14 14:16 15:23 16:10 26:13 50:21 51:19 54:4 59:4 62:17 100:7 103:7 122:18 126:25 128:1 154:5 158:13 187:12,14 point 47:18 55:14 55:19 86:7 145:14 172:20 pointed 127:23 pointing 51:5 125:1 126:13,14 police 7:23,25 8:5 10:9 11:7 15:10 18:21 19:18 22:13 24:21 26:16,25 27:10,16 28:13,22 29:2,3 30:12 32:10 42:17 48:18 48:21 53:10,11 61:7 62:1,8 63:18 85:8 86:11 96:5 97:8,11 99:19,25 102:14 112:19 134:20,21 135:17 135:19 136:1,9 137:1,12,18 138:13 142:10 143:9 147:13 148:4 153:7 154:19 161:9 170:6 173:14	180:4 policeman 69:8 policies 18:21 19:8 19:9 29:5 30:11 30:20 31:14,17 32:3,9,13 71:5 87:22,23 132:14 133:4 134:20 135:6,15 137:8 170:5 180:10 policing 22:22 23:12 policy 10:11,11 28:3 29:9,11 30:14,23 31:21 46:1,9 58:21 73:22,24 74:15 87:9,11,12,13,14 87:19,25 100:11 102:12 103:14 104:13 105:6,16 127:11 151:5 169:23 172:13 173:13 174:5,11 174:15,17 175:9 175:11,13,16,21 176:1,8 179:6,23 poofy 113:19 portion 32:18 59:5 133:23 155:13 position 18:18 38:18 51:21 69:17 74:14 91:1 118:1 173:4 positive 51:10 possible 16:25 129:4 131:24 161:17 possibly 13:9 17:12 26:11 33:5 37:18 52:12 72:18 123:7 123:9 POST 12:24 post-mortem 119:7	pounds 84:22,24 85:5,6,7 powerful 75:23,24 76:22 Poyeye's 37:4 practical 131:7 practice 108:4 127:16 practices 23:15 practicing 59:17 Preferably 60:10 preferred 128:25 130:25 presence 13:15,17 41:22 162:23 present 8:25 13:11 19:15 36:4 82:4 84:2 89:6 press 82:3 pressure 12:19 pressured 59:20 presumed 152:14 pretty 41:5 71:25 136:22 166:10 173:25 prevented 129:12 preventing 73:14 171:13 previous 30:6 100:13 136:21 141:9 previously 35:13 52:13 66:14 139:22 140:5,6 141:13,17 149:17 164:2 primarily 99:9 prior 10:7 16:11 21:6 31:16 34:10 35:19,25 36:15 38:2 41:9,11 63:6 63:12 81:5,6,15 98:3 108:17 112:15 115:4
--	--	---	--	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 210

117:22 122:10 156:16 157:12 161:9 178:18 prisoner 8:13 privacy 142:1 probably 14:3 17:8 26:10 31:7 33:1 36:16 38:22 40:2 41:9 57:1 82:16 106:13 116:3 131:14 177:10 183:17 probe 58:10,11 probes 67:18,21 68:18,20,23 69:20 88:7 113:11,21,22 115:9,14,20,24 116:1 117:6 118:2 118:3,7,10 problem 15:8,12 17:16 22:1 169:6 169:11 problems 30:17 45:20 175:22 procedure 72:8 96:6 102:11 procedures 19:9 23:4,12 28:4 30:11,20 32:3,9 32:14 71:5 72:6 97:10 100:11 102:13 106:17 132:14 133:5 135:7,16 137:9 180:10 process 11:19 17:2 22:2 29:23 155:15 163:2 180:6 processing 187:15 procure 114:2 produce 141:2 produced 139:22 140:1,5,7 164:1,2 product 140:12	Production 187:23 profession 9:20 134:21 135:5 professional 149:24 professionally 85:7 proficiency 12:2,18 proficient 11:2 program 16:2 30:17 progression 162:25 prohibit 73:22,25 promote 135:16 promoted 18:6,8,15 18:16,18 98:17 prompt 187:16 prone 38:23 91:1 118:1 prongs 101:17 pronounce 38:9 proper 23:1 properly 77:10 134:11 151:4 property 42:22 proportional 54:3 proportionate 53:24 propounded 7:1 185:23 186:2 pros 71:20 protect 86:9,10 136:1,8 137:17,21 138:9 proven 69:21 provided 58:15 83:20 141:13 182:11 provider 58:18 proving 180:24 public 135:17,21 136:1,8 137:4,14 137:18 138:9,24 158:22,23 190:18 193:13 pull 12:5,5,7,8	83:14 116:6,9 127:12 157:6 pulled 38:10 114:16,20 116:18 125:20 126:17 127:7 128:3,4 182:8 pulling 114:13 129:7 punch 69:8,10 79:24 purple 91:22 purpose 11:9 16:19 87:12 162:1 purposes 130:21 140:25 142:1 149:25 150:3 pursuant 144:11 185:5 pursuit 43:2 push-up 155:10 156:7,8 pushed 153:19 155:11 put 35:8 50:15,17 50:20 51:2 53:3 53:15 55:11 65:2 73:2 77:10 91:10 91:15 93:23 94:4 94:7 97:13 126:11 126:25 127:25 128:1,23 129:1 135:19 146:20 puts 160:23 putting 73:16,16 79:4 93:16 94:1	108:24 120:22 132:4 133:9,17,22 144:19,22 152:1 170:12,19 183:7,8 questions 5:4,5,6 7:4,8 9:6,19 10:2 86:4 141:4 142:18 163:24 164:7,8 170:15 173:9,11 173:12 176:17 181:25 184:7,8 185:23 186:1 quick 120:5 quickly 108:25 132:24 quite 32:23 92:1 quote 47:3,12 55:3 57:15,23 58:8 64:1,10 77:2 83:13 86:14 87:1 88:24 90:17 quote-unquote 175:20 quotes 55:5 57:17 58:2,12 64:5,13 77:5 83:15 86:17 87:3 89:2 90:19	161:6 re-enforce 134:5 react 12:20 134:11 reaction 40:18 42:12 71:4 80:3 168:16 176:11 reactions 134:9 reactive 59:19 read 29:9,10 30:7 31:13 47:6 55:6 57:18 58:3,13 59:3,6 65:1 77:1 83:16 86:18 87:4 89:3,18 90:21 98:5,21 100:9 110:14 111:4 120:15,25 133:24 144:3 145:24 146:25 151:1,7 154:1 155:4,5,13 156:9 159:22 160:18 184:10 187:10,12 188:1,4 188:7,10,13,16,19 188:22 189:1,4,7 189:10,13,16,19 189:22 190:2 reading 99:3,6 133:21 141:25 reads 57:14,23 143:20 175:16 ready 35:17 real 120:5 realize 160:12 really 11:24 16:12 72:11 96:1 178:11 178:16 rear 54:20 reason 12:8,17 35:21 48:12 72:7 74:8,9 83:23 119:9 141:10 167:19 188:2,5,8 188:11,14,17,20
---	---	---	---	--

Q

question 9:22 11:23
17:22 33:23 52:17
56:7 64:9 65:12
65:15 69:18 75:4
75:10 89:5 92:1
94:17 98:15

R

R-e-t-t-k-e 26:21
race 112:10
radio 36:10 37:6,12
37:14,18 123:17
raise 77:2
raises 134:3
raising 40:4
ran 120:6
range 16:9 22:17
27:16
rank 18:7
rarely 20:11
raspy 89:1,9,20,25
90:15
rate 160:8,19,22

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 211

188:23 189:2,5,8 189:11,14,17,20 189:23 reasonable 181:14 reasons 160:4 reassess 80:19 recall 8:8 23:3,9 34:11 36:12 39:1 39:15 45:2,6,7 62:5,16 63:16 64:21 92:13,14 95:21,23 96:2,23 97:2 106:6,10 107:3,6,18 113:5 114:7 122:16 124:20 125:13 130:5,7 156:11,14 164:14,17,22 178:16,17 receipt 42:22 receive 62:5 received 26:5 34:12 44:14 47:9 55:8 57:20 60:20 61:12 61:15 77:6 83:18 110:7 119:20 139:24 140:8,8 141:11 155:16,23 receiving 62:6 63:16 75:6 recertified 14:25 15:2 recertify 14:21 recipient 74:24 recognize 17:14 recognized 148:21 recollect 118:16 recollection 25:2 37:20 38:21 51:12 52:6 53:9 56:10 61:5 62:10 63:21 85:2 94:24 107:9 125:19 156:12 record 6:1,14 9:6	10:3 41:16 59:6 65:1 88:17,18,19 115:13 122:17,19 122:20,21 127:3 133:15,24 136:14 136:21 139:15,16 139:17,18,19 140:11 141:1,3,6 141:14 142:1 148:10,13,14,15 148:17 149:10 155:6 158:12,14 158:15,16 163:18 163:19,20,21 166:17 170:17 176:5 184:11 recorded 44:1 records 148:21 redone 70:1 reduced 67:4 refer 101:5 171:3,3 referenced 187:10 referred 15:4 108:16 referring 42:16 119:13 refers 101:9 reflect 127:3 refused 150:20 153:18 refusing 146:20 regain 64:3 regard 13:14 17:18 18:19 19:7,8 56:8 106:7 165:18 regarding 10:7 46:12 112:9 116:25 156:4 161:10 169:16 173:14 regards 27:1 Regis 112:23,25 113:1,2 regular 19:6 25:14	28:7 30:1 regularly 30:25 rehabbing 178:8 reinforced 134:24 related 7:25 21:16 186:7 relation 51:15 relative 142:12 relatively 23:8 relay 124:13 released 90:18 relevant 113:16 relied 99:15 relieve 174:23 175:19 rely 150:6 relying 118:5 remarks 185:24 remember 8:12 14:16 33:21 38:13 40:16 54:23 83:20 95:24 123:5 125:5 126:3 130:15 164:12 165:1,5,7 165:9 166:14,17 166:23 167:3,6 169:17,23 170:24 171:7,9 178:16 remembered 102:10 Reminders 29:20 removal 88:5 remove 88:7 removed 91:15 117:17,20 118:12 render 180:14 Renee 1:4 2:8 6:18 repeatedly 134:4 repetitive 134:10 rephrase 9:23 45:17 54:11 65:15 69:18 81:9 138:19 151:20 162:20 reply 7:1	report 10:9,10,10 42:17,18,18 43:2 43:2,11 45:8 55:2 55:20 56:14,17,18 57:13 63:24 64:25 76:24 87:15 88:24 92:15 96:16 97:5 97:8,21,22 98:4 98:20 99:6,8,16 99:17,19 100:10 100:17 102:6,22 103:4 104:25 106:5 107:21 108:16,20 109:1 112:2,6 115:4 118:9 119:25 120:3,23 121:15 121:21 122:3,10 122:10 141:23 143:8 144:12 145:8,10 146:9,11 146:16 147:5,13 149:13 151:15 152:3,6 153:6 154:7,15 156:21 157:15 158:10,11 169:16,18 170:3 170:22 171:2,12 172:21 179:8 180:4 182:7,16,20 182:21 reported 56:12 185:19 reporter 5:22 6:11 9:8,14 59:6 128:17 133:24 184:9 reporting 4:3 6:12 24:22 144:5 187:1 187:23 193:5 reports 19:2 37:14 55:22,22,25 56:8 72:5 98:3,13 99:18 104:7 106:5	121:3 143:7 149:16 150:7 156:16 166:12,19 166:22,24 167:4 171:3 173:3 180:20 represent 7:7 Representative 1:2 2:6 request 141:10 153:24 requested 59:5 87:2 133:23 153:22 require 106:1 174:23 required 14:18 30:11,14 31:24 87:18 106:17 148:8 152:7 173:20 179:5 requirement 174:24 requirements 29:25 requires 174:17 requiring 173:14 reread 174:15 175:11 reserve 149:6 163:25 resist 145:16 146:20 155:10 156:7 157:6 resisted 155:9 resisting 74:5,11 86:24 87:15 108:6 146:22 150:15 153:10 154:25 156:22 resists 101:10 resolve 13:9 respect 86:6 respective 35:3 respects 185:25
---	--	---	--	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 212

respirations 160:19	80:3 81:25 86:12	route 81:5 123:25	105:5 109:12	seat's 15:20
respond 87:2,16,19	88:1 92:1,17 93:8	124:3,4,7,8,15	113:6 118:17	seats 15:17
responded 120:17	95:10,17 103:17	rules 86:9,9 148:21	119:16 120:17,20	second 43:4 62:23
140:6 153:22	109:3,12 110:1,10	rulings 23:16 28:4	145:15 146:17	64:11,19 73:4
responding 124:10	111:3 114:8 115:6	run 15:11 44:9 48:6	155:15 170:18	76:25 79:2 80:14
response 123:22	117:16 118:16	57:25 79:5 114:24	174:5 175:12	81:2,6 84:3 85:9
responsibilities	128:7,11,15,23	120:5	scenario 72:25 73:7	116:18 118:16
95:1 96:11 99:21	129:23 130:23	running 34:19	73:10 79:23 80:11	119:25 120:9
responsibility 29:1	131:8 132:8 150:2	37:25 38:5 48:1	100:9 181:17	126:10 147:24
99:24 165:18	160:2 163:25	56:16 73:10 110:9	182:22 183:14	148:11 153:16
169:21 170:2	171:22 172:19	144:2 165:24	scene 13:20 36:5,11	179:19 182:24
responsive 141:9	175:11 178:1,25	runs 115:2	36:15,22 38:8,11	183:5,9,12
rest 34:1	179:24 187:10	rush 48:12 49:24	38:19 39:23 42:10	seconds 73:5 78:17
results 27:21	rights 28:5		43:24 44:4,5 50:9	79:20 81:13
retained 5:22,25	rise 120:9,11	S	50:17 52:14,20	114:21 115:3,5,6
retired 31:3	risk 74:23 76:8,12	S 3:22 187:3,9	53:25 55:15,17	120:10 141:8
retrieve 95:4	76:16 83:2 160:15	S-h-u-m 121:20	56:13 81:1,7,12	181:10 183:17,23
Rettke 20:22 26:18	riskiest 75:6,13	safe 33:13 52:19	81:12,19,20 82:9	section 143:19
26:19 29:14	risky 82:2	176:18	82:10 85:8,8,11	145:15
123:10	road 34:20 37:4	safely 138:8	87:17,19 90:12	see 22:4,10 39:1
return 187:14	47:5,14 48:16	safer 76:17 174:24	96:14,17 99:1	42:19 48:25 79:20
revamping 22:2	49:13 56:14 66:9	175:22	109:3 112:13	80:3 94:10 118:2
review 30:1 98:2	66:13,22 67:18	safety 127:15	114:2 118:12	118:3,4 124:17
99:25 104:19	126:15,16 128:6	135:10,17,17,21	121:10 123:19	125:18 141:18
121:21 137:8	roadway 48:6	137:14 168:24,25	124:10,11,13,21	143:2 145:1,16
reviewed 10:7,9,10	50:11,12	satisfactorily	129:10 151:9	146:13 151:10,11
31:21 105:19	Robert 136:21	120:18	169:2,5	159:23 175:3
108:17 112:3,4	robot 139:6	Saturday 33:12	schedule 165:22	seen 26:20 37:2,6
156:16 180:21	robotic 132:7	34:7 48:24 49:5	166:3	42:24 43:13 62:14
reviews 21:13	Rodgers 1:4 2:8	50:2	scheduling 21:17	72:4,5 75:19
103:14	6:18	Saturdays 49:2,3	165:12,15,18	122:3 141:7 174:9
rhythm 76:3	role 61:25 164:15	Sauer 27:7	170:10	182:6,15,17,18,19
Rick 24:8	roll 22:16 29:15	saw 38:7 51:1,2	school 7:20 65:17	182:21
rid 40:23	34:12 44:16,17	90:2 94:13 98:20	schools 7:21	sees 81:3
right 12:10,14	164:11,20	121:25 140:14	scooped 93:9	seizure 25:7
13:15,22 14:15	rolled 91:4,5 118:1	156:15	scope 168:18	selection 163:1
24:8 26:16 27:11	room 22:13,16,19	saying 9:12 27:19	scraped 40:3 153:1	semiannual 15:11
29:21 31:15 32:23	25:13 27:19 34:15	41:2 48:23 54:10	scrapes 39:25	send 15:20 17:4
43:5,16 45:9	34:21 36:5,10	67:14 72:25	scratches 92:9	23:24 31:12
50:10,21 55:17	44:15,16,17,18,19	126:15 164:16	screaming 58:1	102:22 104:24
57:14 58:11 61:17	45:9 115:25 116:2	166:7 174:20	scrolling 140:20	105:1 108:5,11
65:18 66:19 68:15	129:19	175:8	seal 193:10	166:7
68:16,18,25 69:10	rotate 33:15	says 6:25 86:14	search 25:6	sending 16:1
69:12 71:25 77:18	rotations 165:23	90:17 100:11	seat 145:18	161:12

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 213

sends 95:6	seriousness 179:13	176:2,6,21 179:3	side-to-side 40:5	108:3,5,19 109:4
sense 36:14 100:22	Service 46:14	181:4,20 182:13	Sig 27:7	109:11 110:11,15
138:20	session 24:25	182:17 183:3,10	sign 29:9,18 187:10	112:7,17,21 115:7
sensitive 89:5	sessions 23:11 25:3	183:21 184:2,8,10	187:13	116:24 117:22
sensory 68:14	set 25:20 185:22	187:3,9	signature 102:3	119:1 120:4,16
sent 95:10,16 96:7	193:8	shafaie@pspclaw...	184:9,13 186:3	121:1,4,11 122:5
103:5 107:20,23	setting 71:3	3:25	187:11,13,15	127:1,9 128:19,24
sentence 44:12	severity 108:6	shattering 145:22	190:4	130:7,24 133:1,17
46:12 47:3,11	sex 112:9	sheet 29:19	signed 31:25 98:22	137:15,19 138:2,6
55:3 57:4,14,23	Shafaie 3:20 5:5	sheets 187:11,13,13	98:23 99:2,6	138:16 141:19,21
58:8 64:1 77:1	6:19,19 11:20	187:14	147:21	141:24 142:4,9,13
83:12 86:14 87:1	21:8 32:15 45:13	shift 33:14,24,25	signs 30:22 151:6	142:19 143:10,14
88:24 90:17	45:16 47:21,24	34:4,7 35:16 49:9	152:4	143:18 144:4,7
150:19	50:22 54:9 56:23	130:5 165:1,12	similar 127:4	145:8,12,25 146:3
separate 97:7 180:2	58:25 59:7,13,23	166:3 167:10,13	simple 29:16	146:6,15 147:1,4
September 1:19	60:4 61:21 65:9	167:17,24	simply 101:17	147:18,23 148:6
2:24 6:2 16:17	66:4,15 67:5,7,15	Shilling 122:2,4	simultaneously	149:15,23 150:4
19:25 33:6 41:11	68:1,10 69:4 70:4	shock 159:4	37:16	150:10 151:8,16
102:7 154:15,23	70:6,14 71:8,21	shoot 59:25 60:8,11	Sincerely 187:21	152:6,9 153:15
156:21 158:3	72:9 73:11,19,23	60:13	sir 7:12 8:7,22 9:25	154:17,20,24
161:9 178:10,19	75:1,8 76:4,19	short 29:15 88:15	10:5,25 11:4,8	155:2,21,24 156:2
185:12 187:6	77:12,20,23 78:13	shortages 22:6	12:7,16 13:5,25	156:9,25 157:15
sequence 182:6	79:6,14 80:16	shorthand 185:20	14:22,23 16:18,22	157:16,23 158:6
sergeant 17:24 18:7	81:8,21 82:11,20	shortly 39:18 60:18	17:1 18:2,5,23	158:10 159:3,15
18:15 24:9 26:10	83:4 84:4,13,15	62:18 86:23	25:18 32:5,11	160:16 162:2,5,9
27:24 33:14,16,18	85:12,19,21 88:16	shot 59:17 145:22	33:8 40:12 42:14	162:15 163:9,17
33:19 40:13,14,16	104:11 111:10	shoulder 150:23	42:19,21 43:3,6	164:5 166:25
48:21 61:16 98:8	128:7,13 129:14	shout 56:21	43:15,18,21 45:5	168:18 175:17
98:10,16,18 99:2	129:24 131:10	shoving 108:8	45:10,21 46:11,15	177:8,10,14
104:1 123:10,11	132:1,9,16,18,25	show 13:19 43:23	46:20 47:1,7,16	178:11 180:7
123:14	133:6,10,25	showed 152:4	50:4 56:6 57:18	182:4,10
sergeants 17:4 19:2	134:13,25 135:12	166:22	58:4 61:11,14	siren 35:10
19:4,20,21 20:2,8	135:22 136:3,10	showing 117:9	62:22,25 63:1,8	sit 26:22 83:24
20:10,17,21 21:7	136:16,18,23,25	shown 149:16	63:11,25 64:8,16	180:18
29:15 78:23 137:2	139:19 140:18,22	185:18	64:24 68:3 72:1	sitting 46:7
serial 95:6 109:5	141:5 144:13,18	shows 151:6 152:3	76:24 78:4 81:14	situation 12:20
series 9:6	144:21 148:10,24	Shum 121:18,20	83:1,17 84:12	13:9,18,21 14:4
serious 104:22	149:5,8 151:19,21	Shum's 122:7	87:8 88:21 89:4	48:1 59:20 65:24
105:9 108:10	151:24 152:16	Shurn 121:19	89:17 90:22 91:18	66:3 78:12,15,24
137:22 138:10	160:24 161:2,5,19	Shurn's 122:8	91:24 93:13 94:10	79:10 84:7 86:8
151:14 152:5,11	162:18 163:3	shut 172:18	99:14,18 100:2,16	89:11 92:23 96:10
155:23 157:24	164:7 168:20,25	shuts 115:2,3	103:24 105:1,12	97:16 99:25
seriously 146:4	170:14,20 173:8	side 49:16,19 70:10	105:17 106:10,20	100:22 106:18
147:9 154:11	173:16,23 175:24	70:12 72:18 169:8	107:15,22,25	110:1 115:23

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 214

134:7,12 144:9 150:15 155:20 158:8 171:11 situations 131:21 132:23 167:9 six 13:2 six-foot 84:24 85:3 six-foot-one 84:22 sizes 113:23,25 skills 11:11,18 skin 118:10 slammed 172:18 slash 43:2 slightly 12:15 66:25 76:16 small 110:13 131:7 smaller 102:16 smart 131:7 smarter 132:10 SNLJ 1:9,10 2:12 2:13 Snodgrass 2:22 3:21 6:3 185:10 187:4 192:9 so-and-so 166:7 soft 162:23 softly 162:24 sole 58:18 solely 64:14 119:13 127:21 140:25 150:2 solving 22:1 somebody 24:2 35:14 45:19 46:2 73:1,9 93:24 131:2,18,19 167:19 169:14 someone's 72:24 99:24 son 142:7 son's 142:6 soon 16:2,25 30:22 93:3 sorry 15:15 20:5	32:22 50:22 52:25 59:2 84:15 92:8 93:22 96:7 109:11 125:3 128:11,15 131:12 132:19 136:5 143:1 144:20 147:11 161:2,3 176:12 sort 13:23 17:9,12 19:4 21:4,17 22:5 25:7,11 29:19 39:5 54:22 61:19 87:18 92:16 100:4 102:17 104:19 106:5 109:17 110:2,4,7 121:12 127:7,8 140:2 143:3 152:22 160:19 165:24,25 167:5 sorts 22:20 sought 111:14,15 sound 89:1,9,12,20 89:25 185:14 sounded 39:11 sounds 86:23 156:9 source 57:11 south 2:22 6:3 49:16 52:1,1 185:10 187:4 192:10 speak 13:11 27:12 31:8 105:24 121:14 133:15 166:5 speaker 44:19 speaking 41:14 47:23,25 72:15 96:20 104:3 special 97:10 Specialist 6:10 specific 21:12 156:12 158:25 175:22	specifically 165:7 166:5,6,21 speculate 66:6 speculating 16:14 speed 11:11 spell 26:12,19 spent 7:20 spit 157:7 spoke 96:17,25 121:18 164:9 spoken 10:15 46:16 46:19 107:2,4,7 spray 40:19,21,25 41:6 71:6 74:25 143:25,25 145:23 157:10,10,13,18 166:23 168:9,13 169:12,13 176:11 sprayed 144:1 146:23 spraying 40:23 sprays 41:8 spread 60:14 68:18 68:20 69:21 116:1 squad 125:24 167:17 squads 19:1 squeeze 115:2 SS 185:2 St 2:23 3:7,23 4:5 6:4,12 7:23 13:3 15:10 24:18 28:13 28:21,21 185:3,11 186:9 187:5,24 191:19 192:5,11 193:7 stability 35:14 staff 19:12,14,15 20:9,11,23 21:7 21:22 107:16 164:11,13 stance 155:10 156:7,8 stand 52:7	standard 127:15 standing 39:13 51:15,25 52:4,10 52:20,22 58:23 65:25 66:9 67:17 72:11 73:9 109:20 staring 47:5,14 56:14 67:17 start 35:16 37:9 47:13 108:24 started 13:1 16:4 18:3 33:24 34:4,5 38:15 143:21 153:21 180:2 starting 52:7 starts 49:10 state 2:23 141:6 159:17 185:1,11 statement 64:10 89:24 94:23 106:2 120:2 121:24 122:2 132:17 134:17,18 135:4 174:25 175:13 191:9 193:9 statements 121:15 states 2:1 6:7 47:3 47:12 55:3 57:4 155:6 157:22 185:6 static 47:18 station 34:15 35:25 36:21 96:18 97:20 114:4 119:2 148:1 statistics 32:1 stay 24:20 39:16 64:4 steps 179:1 stick 177:21 stipulate 136:16 148:19,24 stomach 38:24,25 90:25 117:25 stone 25:20	stop 57:15,24 69:23 89:1 90:1 94:5 110:2 128:7 129:23,23 130:1 143:23 145:20 146:22 157:12 178:9 stopped 38:17 86:16,24 178:14 181:16 stops 74:12 straight 52:4 strain 145:19 strangely 109:19 street 2:22 3:22 4:4 6:3,12 14:5 19:3 25:23 38:23 48:2 49:17 51:6,7,9 65:6 97:21,24 124:24 126:5 158:21 177:12,20 178:2 185:10 187:4,24 192:10 193:6 stress 160:23 stressful 134:11 stretcher 93:16 strike 71:12 76:9 76:11 78:7 80:1,2 94:17 150:21 striking 58:10 145:21 struck 59:10 127:22 150:21 stuff 35:16 41:6 168:8 stun 115:9,12,17,18 115:19,19,22 116:3,5,11,19 subdued 14:9 subject 46:13 47:3 47:12,13 74:4 87:17 119:16 120:6,7,10,12
---	--	---	--	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 215

123:19 145:15,17 146:17,19,21,22 150:23 153:23 169:7 170:11 183:18 subject's 120:21 153:21 subjects 24:13 29:15 164:3 submission 78:2 183:2 184:1 submit 17:3 Subscribed 190:12 substantive 10:18 success 32:13 113:7 sufficient 182:25 suit 186:6 Suite 2:22 3:6,14 3:22 4:4 185:10 187:4 191:18 192:4,10,16 193:6 summarize 92:16 sun 125:14 superior 137:9 supervise 137:3 138:4 supervises 137:13 supervising 18:20 181:24 supervision 137:12 137:16,21 138:8 supervisor 33:22 40:11 42:4 78:23 87:2,20 94:25 97:15 108:21 109:2 123:2 147:22 supervisors 137:10 166:6 supervisory 96:11 supplemental 143:20 supplied 64:14 support 154:6	suppose 13:10 39:10 107:1 116:21 supposed 80:2 106:24 175:14 supreme 23:16 28:4 sure 8:24 11:24 16:12 18:12 28:2 30:24 35:9,10,15 41:4,16 42:6 52:15 53:6,11 54:9 76:6 77:16 78:9 80:13 83:6 88:16 91:7,8 97:1 99:7 101:22 105:21 112:24 121:21 123:13 126:7,15 128:13 136:6 159:18 166:9 167:3 176:11 suspect 12:11 113:14 127:12,13 128:5,5,22,22 129:20 147:25 152:13 154:11 155:22 157:4,6,11 157:11,17 suspect's 129:20 suspicion 109:18 suspicious 14:6 109:14,21 110:8 110:10 swear 6:21 sweaty 92:5 swell 41:4 swinging 58:1 69:14 120:6 switch 93:20 sworn 6:23 8:2 185:16 190:12 system 29:8 68:14 122:24,25	T T 3:4 tackle 152:18,19 tackles 152:13 tackling 152:24 153:2 take 13:20 63:22 76:10 88:15 106:18 119:23 136:14 142:23 152:14 169:10 takedown 72:6,7 taken 2:20 6:5 35:19 40:22 72:18 91:3 109:9 122:7 146:19 152:4 190:3 takes 80:22 talk 25:10 93:22 94:18 96:13 99:9 139:9,9 168:25 talked 21:19 134:6 158:18 164:10,23 166:21 168:12 170:20 talking 27:2 41:15 100:15 112:5 159:1 163:10 165:1 169:18,24 tapes 43:17,19 target 117:1 tase 58:22 68:24,24 85:17 tased 66:2 75:19 84:11 86:11 92:11 180:10 181:9 taser 10:10,11 14:13,19,20,21 27:5,14 41:19 42:18 58:9 59:20 60:1,3,7,22,25 61:3,7,8,12,19,20 62:2,3,16 64:18 64:20 65:4,13	67:18 69:19 72:21 73:5 74:15,25 75:13,17 76:6,14 76:15 77:1,9 78:7 79:2,3,12 81:2,15 82:7 83:2,10 84:3 87:19,21 88:3,13 95:5 101:3,17 108:16,19,23 109:2,5 111:20,24 111:25 112:5 113:7,9 114:2,4 115:1 116:18 119:12,25 120:6 142:8 145:7 146:2 147:3 148:8 152:7 154:12 155:25 157:25 158:6,9 160:22 164:17 167:9,13,22 168:9 175:2,4 176:12,19 177:1,3,13,18 178:9,14 179:18 180:3 181:12 182:6,7,15,19,21 182:24 183:19 tasered 73:9 tasering 108:22,23 108:24 tasers 14:15 60:19 60:20,21 61:25 62:19 68:5 143:15 143:17 154:19 158:4,5 167:16,18 167:24 176:18 177:1,17 tases 108:24 tasing 40:7 73:15 85:9 121:6 tasings 87:20 TAXED 192:1,7,13 teach 61:1 88:7 teaches 60:1 teaching 16:4 60:3	team 15:5 technician 166:8 technique 155:8 techniques 11:18 13:8,23 22:25 162:11,12,20,21 167:5 tell 7:13,18 9:4,23 10:6 13:6 14:13 17:18,25 18:3,6 21:24 23:6 33:24 34:9 35:6 36:2,8 42:3 44:3 52:16 52:19,21 61:24 64:17 74:6 79:19 87:11,22 92:2,24 95:14 96:21 100:7 102:11 103:7 115:16 129:22 140:10 telling 38:16 67:12 104:4 117:9 173:4 tells 30:17 114:25 ten 81:12 term 109:17 159:21 terms 9:21 21:12 21:14 78:3 82:25 test 27:5 28:8,17,20 testified 51:1 52:13 52:15 173:17 185:18 testify 6:24 185:16 testimony 31:16 63:16 107:20 130:3 137:7 156:16 170:9 173:24 178:18 185:19,22 190:5 testing 25:12,14 26:23 30:2 134:4 tests 27:8,22 thank 6:20 20:6 53:3 54:6 105:3 109:12 127:2
---	---	--	---	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 216

142:20 163:23 164:4,5 theoretically 129:4 thereto 185:25 they'd 25:10 thigh 58:11 thing 19:5 21:4,18 22:5 25:7,11 29:19 34:17 38:7 57:1 87:18 95:22 102:17 110:3 141:5 160:20 165:24,25 things 12:3 22:20 23:9,13 25:4,14 44:10 53:25 82:14 95:9,15 96:9 112:10 121:23 122:15 131:23 135:9 140:20 163:6 164:10 think 17:25 19:9 21:20 24:14 26:9 26:20 31:5 39:15 39:18 43:1 53:7 62:24 63:10 74:2 81:8 89:23 90:12 98:7 100:14 102:20 113:4 115:4 121:20 126:12,14,18 128:8,12 133:14 144:12 151:24 160:10 166:16 171:5 173:23,25 173:25 175:12,22 177:24 182:22 183:5,23 thinking 114:25 127:17 third 77:2 81:6,15 84:3 85:9 110:12 110:16 111:18,19 111:21 120:13,23	147:19 150:19 179:19 181:15 thorough 136:22 thought 41:14 53:16 89:18,19 112:4 136:22 139:23 172:12 174:14,24 175:7 threat 67:3,22,22 67:23,24 69:3 70:1 78:19 79:5 80:6,9 81:20 82:17 threatened 55:25 three 7:22 11:16 19:18,19 20:6 24:21 26:17 36:17 37:7 63:5,6 74:22 75:5 114:10,12,17 114:21,25 123:9,9 141:4 143:22 threw 69:10 throw 72:4 throws 69:7 79:24 thumb 163:6 Thursday 48:25 tie 46:6 Tim 6:9 46:14 time 8:1 9:18 17:13 17:20 19:18 23:18 30:10 31:6,20 33:9 34:3 36:3,3,9 36:9,12,20 38:14 40:6,13 41:17 45:23,24 48:22 49:9 50:9 51:22 52:5 55:14,16,19 56:12,16 57:2 64:17,17 65:25 66:1,2 67:20 69:19 70:13 78:11 79:16 80:22 82:7 85:4 87:6 90:2,6 92:12 93:5 94:6	97:15 100:18,19 106:21,25 112:23 112:24 114:20 117:2 121:13 123:4,11,16 130:9 130:15 133:3 138:18 149:21 163:24 164:4 165:11 168:17 169:21 170:2 171:19,21 172:11 173:9,18 179:10 180:11,20 181:15 181:18 183:18,24 184:5 timeframe 23:21 times 8:7 11:17 25:16,24 44:2 73:3 114:17,21 143:22 146:22 182:7 Timothy 4:2 Tina 1:1 2:5 6:6,16 7:7 107:2 191:5 titled 141:23 tjohnson@batyh... 3:17 to-wit 7:2 today 6:2,10 7:8 10:7,15 12:15 25:20 26:23 46:10 51:12 83:24 107:11 140:16 156:17 163:24 180:18,21 181:24 182:12 told 21:2 41:5 55:3 55:11 57:12,15 60:8 64:6 78:25 86:16,20 98:16 106:15 114:12,16 114:20 115:5 118:6 140:7,10 143:22 146:21	153:18 161:7 176:11 180:23 tolerate 40:20,25 42:1 168:9 tolerates 41:1 Tom 164:25 tool 13:24 74:5 131:1 143:17 161:16 162:8,10 162:13,15 tools 17:15 41:18 72:19,20 74:9 162:16 163:1 175:15 top 95:21 topic 164:12,14,19 topics 164:9 Total 192:6,12,18 totally 138:21 totals 165:24 touched 71:20 towels 157:18 traffic 34:19 38:5 48:2,8,12,15,23 49:1,3,6,15,20,21 50:1,5,6 51:24 56:2 67:4 79:5 110:2 124:25 127:21 train 28:22 131:24 135:20 137:24 trained 15:6,8 17:6 75:17 77:16 85:7 131:1,2 132:13,15 134:23 139:1 162:4,7,12 training 10:24 11:1 11:5,10 12:4,17 12:24,25 13:4,7 14:2,13,20,21,23 15:5,5,9 16:1,16 16:21,25 17:6,7 17:13 22:8,8,10 22:12,15,18,21,22	22:23 23:10,20 24:25 25:3,13,17 25:21 26:1,6,24 27:1,6,14,15 28:1 28:3,7,16,19 29:5 32:4,14 47:17,19 56:20,25 57:3 59:12 60:15,16,16 60:24 61:2,13,20 63:20 75:20 78:5 78:12 86:8 88:11 113:18 114:23 127:11,14 133:3 134:4,5,7,10 135:6 136:7,7 137:20 138:7 161:7,8,13,15,22 162:21 163:7 training's 134:23 trainings 23:13 transcribed 185:20 transcript 5:23 43:23 185:19 186:1 187:12 190:2,5 191:15 192:1 transcripts 43:13 193:1 transferred 178:12 178:15 transfers 22:5 transition 92:25 transitional 27:6 translate 9:14,15 traveling 49:17 treated 119:17 153:23 treatment 119:20 trial 180:14,17 185:8 tried 77:2 86:15 120:11,12 130:3 trigger 114:14,17 114:21 182:8
---	--	--	--	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 217

truck 93:7 true 128:21 131:15 131:23 150:9 185:25 190:5 truth 6:24,24,25 185:16,16,17 try 9:23 11:14 17:1 19:11 39:14 82:2 92:16 95:11 108:25 127:16 143:2 180:24 trying 16:24 37:9 55:15 130:11 157:1 176:4 turn 24:15 turned 39:2,4 51:23 90:3 turning 40:5 turns 141:2 twice 11:15 84:12 two 15:15 16:3 19:1 19:2,19 20:6,15 21:21,21 24:9 26:15 37:7 63:17 78:3 84:17 85:16 85:22 93:16 99:10 99:11 116:1 117:5 118:7 123:7 125:23 129:19 143:3 169:12 183:17,23 type 14:4 23:18 70:2,21 89:12 95:9 types 22:23 32:1 131:6 159:1 typewriting 185:21 typically 171:1 typing 96:21 <hr/> U <hr/> uh-huh 9:12 28:15 160:6 uh-uh 9:13	ultimate 17:2 ultimately 19:1 20:19 106:25 unable 41:25 42:13 unadvisable 74:3 unarmed 67:17 81:17 unclear 9:19 104:23 uncomfortable 88:8 underlying 160:12 160:14 understand 7:10 9:11,16,17,22,24 10:2,3 11:6,22 12:3 17:14 27:9 28:2 29:10 30:2 31:15 33:7 42:17 53:18 65:11 68:7 68:7 69:16 70:17 72:24 74:14,23 75:3,9 83:25 85:11 86:6 94:20 98:24 132:3 133:16 137:6 143:7 158:7 177:24 178:18 180:13 understanding 13:7 16:20 31:19 42:9 61:24 63:15 88:10 98:25 107:19 113:15,17 113:23 114:18,22 114:24 115:13,16 116:15 117:24 130:2 159:16 160:21,25 175:7,8 176:8 Understood 15:19 17:18 24:4 27:21 42:25 76:13 83:23 108:14 127:18	174:11 underwent 73:6 undetermined 185:6 undisclosed 170:9 uniformly 132:15 unintended 76:3 unique 80:9 United 2:1 6:7 185:6 units 24:20 unresponsive 120:24 updates 23:16 upper 58:11 upset 17:11 upstairs 23:24 24:1 use 9:21 10:9,11 11:2 12:6 13:10 13:23 28:5 41:17 42:18 43:1 53:1 55:2 63:23 65:21 65:21,21 69:2,8 70:10,10,12,19,20 70:25 71:12,14,16 72:5,20 74:5,9,24 75:7 76:7,8,14,24 77:18 78:12 80:20 82:2 87:14 96:15 99:8,16,21 100:8 101:2 102:12 103:4,17 104:9,25 105:1,14 108:20 109:17,24 112:6 115:19,21 116:11 116:16 120:3 129:11 133:4 134:8 135:7,20 136:7 137:13 138:13 143:17,25 145:22 146:1,8,16 147:3,13 149:13 153:6 154:15,19 156:6,20 161:15	161:16 162:16,21 163:12,13 166:12 167:21 169:16,18 169:22 170:4,22 170:23 171:5,12 171:14,18,25 172:4 178:21 179:8,12 180:15 181:1 182:2 user 60:24 142:8 users 61:9 uses 32:2 71:19 76:17 166:18 usually 15:11 19:17 25:8 28:9 42:3 49:5,9 108:12 <hr/> V <hr/> V 154:3 vacation 165:25 vacations 19:4 vague 133:11 168:17 valid 133:13 various 7:21,24 vehicle 35:18 53:10 53:11,19,25 125:6 125:8,9 127:4,20 127:20,22,24 154:4,6 157:5,9 vehicles 124:22 verbal 155:6 versus 6:6 131:19 168:10 video 4:3 6:10,12 121:11 139:18 141:14 148:15 187:1,23 videographer 4:1 6:1,20 9:7 88:17 88:19 122:19,21 139:16 141:14 148:13 149:10 158:14,16 163:19	163:21 184:11 videos 75:19 121:9 Videotaped 1:17 2:20 violated 180:9 violation 110:20,23 111:22 violence 56:8 violent 78:16 157:12 visible 53:4 54:3 101:8 voice 41:22 162:23 voices 160:3 volts 73:2 75:18 79:12 vs 1:9 2:12 187:7 191:5 <hr/> W <hr/> W-o-o-d 123:15 wait 79:20 waited 64:23 waiting 46:7 waive 187:10 waived 184:13 186:3 walk 55:4 157:2 walkie-talkies 44:20 walks 94:2 want 9:5,13,22 14:7,9 16:7 21:3 24:5 26:19 28:2 44:9,11 52:24 57:2 60:10 73:4 74:6 79:16 80:25 81:10 87:16 115:25 126:11,15 128:7 132:6 140:18,22 141:5 156:10 162:3 167:20 168:14,19 168:20
--	--	---	---	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 218

wanted 41:16 53:2 102:10 112:5 128:13 130:14 140:16 158:24 172:17 warned 143:24 157:11 warnings 61:3,7 62:9 warrant 111:14,15 wasn't 46:1 66:6 90:4 92:10 123:15 131:2 161:14 169:5 171:16 182:11 watch 18:24 watching 183:20 way 9:9 13:11,11 17:23 23:1 29:12 45:6 51:5 52:15 53:13 60:14 108:23 110:6 116:14 119:9 124:11,16 130:16 135:19 145:4,13 159:22 168:23 172:19 175:5,16 178:17 179:11 we'll 22:23 53:18 94:18 136:16 184:10 we're 6:1,11 9:12 10:2 15:7 17:10 22:1,4 53:1 74:8 119:11 123:24 128:14 148:17 181:24 184:11 we've 22:12,21,21 27:2,4 42:16 71:19 79:1 83:24 96:14 99:10 123:7 123:14 178:6 weapon 11:2 12:5,8 12:9,11 55:22	56:12 59:20 73:8 weapons 27:14 wearing 113:14 Wednesday 187:2 weekly 19:11,12 weighed 85:4 weight 112:10 welcome 155:4 went 13:3 20:11 35:2,4 37:5 60:7 60:16 92:11 96:21 106:14 115:4 119:22 166:11 179:5 weren't 28:9 52:15 98:6 west 49:12,14 127:10 westbound 49:20 50:1,11 52:3 Westering 3:12 6:17,17 170:13 173:1 184:6 whatsoever 92:6 WHEREOF 193:8 whichever 103:18 161:12 White 8:15 10:19 16:16 34:22 37:17 38:11 39:12,13,16 51:18,21,23 52:4 73:18 81:1,8,11 81:19 83:13,19 84:1,6,20,22 86:16,21 87:1 90:5,13,17 92:19 97:20 98:2 99:13 104:2,10 118:6 121:3 122:12 156:3 182:3 White's 126:11 178:21 wide 68:18,20 69:20	widow 7:7 wife 55:25 William 1:17 2:20 3:4 6:5,22 7:15 187:6 190:1,10 191:11 window 145:21 windows 157:8 wires 94:7 withdraw 17:22 61:23 151:25 witness 6:21 50:19 51:17,20 53:20 54:5 121:22 126:22 127:6 128:2,10 131:12 139:20 161:4 164:5 184:5,14 185:14,23 186:2,9 187:10,12 190:1 193:8 witnesses 95:13,19 121:14,17 Wood 123:14 word 44:15 75:24 105:21 111:3 139:5 worded 179:22 work 7:25 35:8,10 42:2 65:13 68:6 79:20,21 140:12 165:20 worked 41:5 68:17 78:10 96:22 113:12 working 8:9 21:2 33:16,16,19 68:8 77:10,17 79:3 93:13 140:13 167:18 177:14 178:8 works 97:18 100:7 worry 170:16,18 worst 52:17	worth 134:20 wouldn't 59:16 67:21 70:9,11,18 70:18 79:16 111:9 111:15 123:24,25 163:15 168:19 183:13 wrestle 72:17 wrestling 73:7 100:9,22 102:16 wrist 41:19 70:21 73:17 writing 87:25 111:4 written 24:12 27:5 27:7 28:20 96:19 97:2 99:18 109:13 139:17 148:14 174:12 175:14 wrong 77:21 133:8 165:4 173:2 174:16 178:19 wrote 92:15 120:22	<hr/> Z <hr/> <hr/> 0 <hr/> 0015 55:2 03-04-080 47:4 06:46 100:18 07 187:2 09/17/11 43:10 100:18 <hr/> 1 <hr/> 1 50:16,17 51:2 128:23 192:7,13 1-31 5:21 1:14 184:12 10 79:20 10/30/2009 146:13 100 2:22 3:22 6:3 185:10 187:4 192:10 11 73:5 11-second 73:15 11:08 88:17 11:15 88:20 11:55 122:19 11:57 122:22 12 5:8 42:16 55:1 63:23 76:24 83:12 88:22,23 96:15 99:12 100:14 108:15,15,15 143:21 12:15 139:16 12:20 141:15 12:28 148:13 12:30 149:11 12:40 158:14 12:44 158:17 12:50 163:19 12:51 163:22 12th 154:15 135 84:24 139 5:12 14 7:21 100:14
--	---	---	--	---

Tina Moore, et al. v. Brian Kaminski, et al.

William Ballard

September 25, 2015

Page 219

142 5:13	161:10 178:10,20	360 85:7	64112 192:17
145 5:14	2015 1:19 2:24 6:2	<hr/> 4 <hr/>	64112-3012 3:15
146 5:15	185:13 186:10	4 53:16,20 54:13	6th 186:10
147 5:16	187:2,6	127:5 128:19	<hr/> 7 <hr/>
148 5:17	210 3:14 192:16	4:14-CV1443 1:9	7 5:4
15 36:7 76:25 83:13	211 3:6 191:18	2:12	700 193:6
88:24 99:12 117:1	192:4	4:14-CV1447 1:10	<hr/> 8 <hr/>
153 5:18	21st 156:21 158:3	2:13	8 143:20
154 5:19	22 66:20 73:3	400 2:23 3:22	816 3:16
156 5:20	143:19 145:15	185:10 187:4	835 2:25 186:18
15th 145:11 153:8	22A 5:11 50:15	192:10	89 143:11
16 73:3	54:13 66:1 125:1	4050 3:6 191:18	<hr/> 9 <hr/>
164 5:5	126:13,14 127:23	192:4	9/25/2015 190:3
173 5:6	23 5:12,24 139:21	42 5:8	191:13
17th 33:6 102:7	139:24 140:1	421-5545 3:24	9:30 6:2
154:23 178:10	141:18	4600 3:14 192:16	92 15:14
18 117:6	23rd 147:14	48 24:23	
180 84:22 85:5,6	24 5:13 142:22	4th 3:22 21:17	
19 5:9 62:12 63:9	144:15 166:16	<hr/> 5 <hr/>	
1989 8:3	241-6750 4:6	5 126:24,25 127:24	
1st 63:11	187:25	5:00 48:25	
<hr/> 2 <hr/>	25 1:19 5:14 145:9	50 5:11 15:13,17	
2 51:14 52:24 64:1	187:6	50,000 73:2 75:18	
20 5:10 62:12,24	25th 2:24 6:2	79:12	
190:13	143:13 185:12	515 4:4 6:12 187:24	
2000 16:8 18:9	26 5:15 15:24 18:1	193:6	
2005 17:19,21,24	48:17 146:10	531-7200 3:16	
2008 16:12 18:16	147:11 149:14	55 113:24	
18:19 143:13	27 5:16 147:12	552 142:13	
2009 18:16,19	28 5:17 149:12	560 83:13	
145:11	150:14,14	571300 109:6	
2010 14:17,17 16:9	29 5:18 153:5	<hr/> 6 <hr/>	
16:11 23:21 32:7	<hr/> 3 <hr/>	6 128:1	
62:20 63:10,11	3 51:18 52:24	6:30 34:5	
130:9 143:16	30 5:19 106:13	61 7:17	
147:14 149:14	154:14 187:14	62 5:9,10	
2011 16:17 19:25	300 4:4	621-2500 3:8	
20:5,7,10 23:9,20	30th 146:12	63101 4:5 187:24	
31:6 32:7,24 33:6	31 5:20 156:20	191:19 192:5	
40:17 50:2 60:3	166:16	193:7	
63:4 102:7 130:9	314 3:8,24 4:6	63102 3:7,23 187:5	
153:8 154:16,23	187:25	192:11	
156:21 158:3	31st 63:4		